code of federal regulations

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Patents, Trademarks, and Copyrights

ORIGINAL

37

Revised as of July 1, 1982

022-003-94822-8

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

code of federal regulations

Patents, Trademarks, and Copyrights

37

Revised as of July 1, 1982

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1982

With Ancillaries

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Cite this Code C F R

thus: 37 CFR 1.1

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

THIS TITLE

Title 37—PATENTS, TRADEMARKS AND COPYRIGHTS is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of July 1, 1982.

In this revision, the parts in Chapter I, Subchapter A are regrouped according to subject matter. All parts pertaining to patents—Parts 1, 3, 5, and 7 and the index pertaining to patents appear sequentially. All parts pertaining to trademarks—Parts 2, 4, and 6 and the index pertaining to trademarks follow, also in sequence. Appropriate notes are inserted in the text to guide the user.

For this volume Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

New Publication

List of CFR Sections Affected

(1964 through 1972)

A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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CHAPTER I—PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE

Editorial Note: Chapter I—Patent and Trademark Office, Department of Commerce, Subchapter A—General, contains patent and trademark regulations. Subchapter A has been restructured to allow parts pertaining to patent regulations and trademark regulations to be grouped separately.

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Editorial Note: Nomenclature changes affecting Chapter I appear at 40 FR 5158, Feb. 4, 1975.

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AUTHORITY: 35 U.S.C. 6, unless otherwise noted.

SOURCE: 24 FR 10332, Dec. 22, 1959, unless otherwise noted.

NOTE: In Patent and Trademark Office publications and usage the part number is omitted from the numbers of §§ 1.1 to 1.352 and the numbers to the right of the decimal point correspond with the respective rule numbers.

Subpart A—General Provisions

GENERAL INFORMATION AND CORRESPONDENCE

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

(a) All letters and other communications intended for the Patent and Trademark Office must be addressed to "Commissioner of Patents and Trademarks," Washington, D.C. 20231. When appropriate, a letter should also be marked for the attention of a particular officer or individual.

(b) Letters and other communications relating to international applications during the international stage and prior to the assignment of a national serial number should be additionally marked "Box PCT."

(c) Requests for reexamination should be additionally marked "Box Reexam."

NOTE: Sections 1.1 to 1.26 are applicable to trademark cases as well as to national and international patent cases except for provisions specifically directed to patent cases. See § 1.9 for definitions of "national application" and "international application."

(Pub. L. 94-131, 89 Stat. 685)

[46 FR 29181, May 29, 1981]

§ 1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

§ 1.3 Business to be conducted with decorum and courtesy.

Applicants and their attorneys or agents are required to conduct their business with the Patent and Trademark Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by his direct order. Complaints against examiners and other employees must be made in communications separate from other papers.

§ 1.4 Nature of correspondence.

(a) Correspondence with the Patent and Trademark Office comprises: (1) Correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents or trademark registrations, orders for copies of records, transmission of assignments for recording, and the like, and (2) correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.352; of international applications in Subpart C, §§ 1.401 to 1.482; and of Trademark applications §§ 2.11 to 2.189.

(b) Since each application file should be complete in itself, a separate copy of every paper to be filed in an application should be furnished for each application to which the paper pertains, even though the contents of the papers filed in two or more applications may be identical.

(c) Since different matters may be considered by different branches or sections of the Patent and Trademark Office, each distinct subject, inquiry or order should be contained in a separate letter to avoid confusion and delay in answering letters dealing with different subjects.

(Pub. L. 94-131, 89 Stat. 685)

[24 FR 10332, Dec. 22, 1959, as amended at 43 FR 20461, May 11, 1978]

§ 1.5 Identification of application, patent or registration.

(a) When a letter concerns an application for patent, it should state the name of the applicant, the title of the invention, the serial number or international application number of the application, the date of filing the same, and, if known, the group art unit and name of the examiner to which it has been assigned (see § 1.55).

(b) When the letter concerns a patent, it should state the number and date of issue of the patent, the name of the patentee, and the title of the invention.

(c) A letter relating to a trademark application should identify it as such and by the name of the applicant and the serial number and filing date of the application. A letter relating to a registered trademark should identify it by the name of the registrant and by the number and date of the certificate.

(d) A letter relating to a reexamination proceeding should identify it as such by the number of the patent undergoing reexamination, the reexamination request control number assigned to such proceeding and, if known, the group art unit and name of the examiner to which it has been assigned.

(Pub. L. 94-131, 89 Stat. 685; 35 U.S.C. 6)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969; 43 FR 20461, May 11, 1978; 46 FR 29181, May 29, 1981]

§ 1.6 Receipt of letters and papers.

(a) Letters and other papers received in the Patent and Trademark Office are stamped with the date of receipt. No papers are received in the Patent and Trademark Office on Saturdays, Sundays or holidays within the District of Columbia.

(b) Mail placed in the Patent and Trademark Office pouch up to midnight on weekdays, excepting Saturdays and holidays, by the post office at Washington, D.C., serving the Patent and Trademark Office, is considered as having been received in the Patent and Trademark Office on the day it was so placed in the pouch.

(c) In addition to being mailed or delivered by hand during office hours, letters and other papers may be deposited up to midnight in a box provided at the guard's desk at the lobby of building 3 of the Patent and Trademark Office at Crystal Plaza, Arlington, Virginia and at the main entrance of the Department of Commerce Building, Washington, D.C., on weekdays except Saturdays and holidays, and all papers deposited therein are considered as received in the Patent and Trademark Office on the day of deposit.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969]

§ 1.7 Times for taking action: Expiration on Saturday, Sunday or holiday.

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the Patent and Trademark Office falls on Saturday, Sunday, or on a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day which is not a Saturday, Sunday, or a holiday. See § 1.304

for time for appeal or for commencing civil action.

§ 1.8 Certificate of mailing.

(a) Except in the cases enumerated below, papers and fees required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if: (1) They are addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, and deposited with the U.S. Postal Service with sufficient postage as first class mail prior to expiration of the set period, and (2) they are accompanied by a certificate stating the date of deposit (see forms, §§ 3.55 and 4.23). The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed on or before the date indicated, the actual date of receipt of the paper or fee will be used for all other purposes. This procedure does not apply to the following:

(i) The filing of national applications for patent;

(ii) The filing of trademark applications;

(iii) The filing of agreements between parties to an interference under 35 U.S.C. 135(c);

(iv) The filing of an affidavit showing that a mark is still in use or containing an excuse for nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c);

(v) The filing of an application for renewal of a mark registration under section 9 of the Trademark Act, 15 U.S.C. 1059;

(vi) The filing of a petition to cancel a registration of a mark under section 14 (a) or (b) of the Trademark Act, 15 U.S.C. 1064(a), 1064(b);

(vii) The filing of an affidavit under section 15, subsection (3) of the Trademark Act, 15 U.S.C. 1065;

(viii) The filing of a notice of election to proceed by civil action in an inter partes proceeding under 35 U.S.C. 141 or section 21(a)(1) of the Trademark Act, 15 U.S.C. 1071(a)(1), in response to another party's appeal to the Court of Customs and Patent Appeals;

(ix) The filing of a notice and reasons of appeal under 35 U.S.C. 142 or a notice of appeal under section 21(a)(2) of the Trademark Act, 15 U.S.C. 1071(a)(2);

(x) The filing of a statement under 42 U.S.C. 2182 or 42 U.S.C. 2457(c); and

(xi) The filing of international applications for patent and papers relating thereto.

(b) In the event that correspondence or fees are timely filed in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence or fee will be considered timely if the party who forwarded such correspondence or fee (1) informs the Office of the previous mailing of the correspondence or fee promptly after becoming aware of the Office action, (2) supplies an additional copy of the previously mailed correspondence or fee and certificate, and (3) includes a declaration under § 1.68 or § 2.20 which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing.

(Pub. L. 94-131, 89 Stat. 685)

[41 FR 43721, Oct. 4, 1976, as amended at 43 FR 20461, May 11, 1978]

§ 1.9 Definitions.

(a) A national application as used in this chapter means a U.S. national application for patent which was either filed in the Office under 35 U.S.C. 111 or which resulted from an international application after compliance with 35 U.S.C. 371.

(b) An international application as used in this chapter means an international application for patent filed under the Patent Cooperation Treaty prior to entering national processing at the Designated Office stage.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20461, May 11, 1978]

RECORDS AND FILES OF THE PATENT AND TRADEMARK OFFICE

§ 1.11 Files open to the public.

(a) After a patent has been issued, the specification, drawings, and all papers relating to the case in the file of the patent are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. After an award of priority by the Board of Patent Interferences as to all parties, or after termination if no such award is made, the file of any interference which involved a patent, or an application on which a patent has issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

(b) All reissue applications and all applications in which the Office has accepted a request filed under § 1.139, and related papers in the application file, are open to inspection by the general public, and copies may be furnished upon paying the fee therefor. The filing of reissue applications will be announced in the *Official Gazette*. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.

(c) All requests for reexamination for which the fee under § 1.21 (x) has been paid, will be announced in the *Official Gazette*. Any reexaminations at the initiative of the Commissioner pursuant to § 1.520 will also be announced in the *Official Gazette*. The announcement shall include at least the date of the request, if any, the reexamination request control number or the Commissioner initiated order control number, patent number, title, class and subclass, name of the inventor, name of the patent owner of record, and the examining group to which the reexamination is assigned.

(d) All papers or copies thereof relating to a reexamination proceeding which have been entered of record in the patent or reexamination file are open to inspection by the general public, and copies may be furnished upon paying the fee therefor.

[42 FR 5593, Jan. 28, 1977, as amended at 43 FR 28477, June 30, 1978; 46 FR 29181, May 29, 1981]

§ 1.12 Assignment records open to public inspection.

The assignment records, relating to original or reissue patents, including digests and indexes, are open to public inspection and copies of any instrument recorded may be obtained upon payment of the fee therefor. Assignment records, digests, and indexes, relating to any pending or abandoned application are not available to the public. Copies of any such assignment records and information with respect thereto shall be obtainable only upon written authority of the applicant or his assignee or attorney or agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided by these rules. An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number or international application number of the application, an extra charge will be made for the time consumed in making a search for such assignment.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20461, May 11, 1978]

§ 1.13 Copies and certified copies.

(a) Copies of patents and trademark registrations and of any records, books, papers, or drawings belonging to the Patent and Trademark Office and open to the public, will be furnished by the Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Such copies will be authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name attested by an officer of the Patent and Trademark Office authorized by the Commissioner, upon payment of the fee for the authentication certificate in addition to the fee for the copies.

(35 U.S.C. 10)

§ 1.14 Patent applications preserved in secrecy.

(a) Except as provided in § 1.11(b) pending patent applications are preserved in secrecy. No information will be given by the Office respecting the filing by any particular person of an application for a patent, the pendency of any particular case before it, or the subject matter of any particular application, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority in that particular application from the applicant or his assignee or attorney or agent of record, unless the application has been identified by serial number in a published patent document or the United States of America has been indicated as a Designated State in a published international application, in which case status information such as whether it is pending, abandoned or patented may be supplied, or unless it shall be necessary to the proper conduct of business before the Office or as provided by this part. Where an application has been patented, the patent number and issue date may also be supplied.

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application which is open to inspection pursuant to § 1.139, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

(c) Applications for patents which disclose, or which appear to disclose, or which purport to disclose, inventions or discoveries relating to atomic energy are reported to the Department of Energy, which Department will be given access to such applications, but such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or an invention or discovery or that such application in fact discloses subject matter in categories specified by sections 151(c) and 151(d) of the Atomic Energy Act of 1954, 68 Stat. 919; 42 U.S.C. 2181 (c) and (d).

(d) Any decision of the Board of Appeals or the Board of Patent Interferences, or any decision of the Commissioner on petition, not otherwise open to public inspection shall be published or made available for public inspection if: (1) The Commissioner believes the decision involves an interpretation of patent laws or regulations that would be of important precedent value; and (2) the applicant, or any party involved in the interference, does not within two months after being notified of the intention to make the decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information. If a decision discloses such information, the applicant or party shall identify the deletions in the text of the decision considered necessary to protect the information. If it is considered the entire decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of decisions are made public over their objection. See § 2.27 for trademark applications.

(Pub. L. 94-131, 89 Stat. 685)

[24 FR 10332, Dec. 22, 1959, as amended at 42 FR 5593, Jan. 28, 1977; 43 FR 20462, May 11, 1978]

§ 1.15 Requests for identifiable records.

(a) Requests for records not disclosed to the public as part of the regular informational activity of the Patent and Trademark Office and which are not otherwise dealt with in the rules in this part may be made by completing Form CD-244, "Application to Inspect Department Records," and submitting this form, in person or by mail, to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. A nonrefundable application fee of $2 must accompany each application. Copies of Form CD-244 are available in the Central Reference and Records Inspection Facility, Room 2122, Department of Commerce Building, Washington, D.C. 20230, the search room of the Patent Reference Branch of the Patent and Trademark Office, the search room of the Trademark Examining Operation, and in many public information offices and field offices of the Department of Commerce. If the requested record is identifiable, the request will be reviewed by the appropriate official authorized to make an initial determination of the availability of the record. If it is determined that the material is not to be made available to the requesting person, said person shall be notified in writing of that fact and the reasons why the record will not be disclosed. If the record is to be made available, inspection will be permitted in the appropriate Patent and Trademark Office search room. Fees for copies of records and for searches and related services are payable in accordance with the schedule of fees and charges established in § 4.8 of Title 15, Code of Federal Regulations.

(b) Any person whose application to inspect a record has been refused may request a reconsideration of the initial denial by completing and submitting the appropriate section of the Form CD-244. The request for reconsideration should be made within 30 days of the date of the original denial. In submitting such request the party should include any written argument he desires to support his belief that the record requested should be made available. No personal appearance, oral argument, or hearing shall be permitted. The decision upon such request shall be made by the Commissioner of Patents and Trademarks and shall be based upon the original request, the denial, and any written argument submitted by the person seeking access to the record. The decision upon review shall be promptly made in writing and communicated to the person seeking access. If the decision is wholly or partly in favor of availability, the requested record to such extent shall be made available for inspection as described in paragraph (a) of this section. To the extent that the decision is adverse to the request, the reasons for the denial shall be stated. A decision upon review completed as provided herein shall constitute the final decision and action of the Patent and Trademark Office as to the availability of a requested record, except as may be required by court proceedings initiated pursuant to 5 U.S.C. 552(a)(3). Reconsiderations resulting in final decisions as prescribed herein shall be indexed and made available in the search room of the Patent Reference Branch.

(c) Procedures applicable in the event of a subpoena, order, or other compulsory process or demand of a court or other authority shall be those set forth in section 7 of Department Order 64 (32 FR 9734, July 4, 1967).

(Sec. 1, 66 Stat. 793, 81 Stat. 54; 5 U.S.C. 552, 35 U.S.C. 6)

[32 FR 13812, Oct. 4, 1967, as amended at 34 FR 18857, Nov. 26, 1969]

FEES AND PAYMENT OF MONEY

§ 1.21 Patent and miscellaneous fees and charges.

In addition to the fees prescribed by statute, the following fees and charges are established by the Patent and Trademark Office:

(a) For typewritten copies of records, for each page produced (double-spaced) or fraction thereof	$1.50
(b) For photocopies or other reproductions of records, drawings, or printed material, per page of material copied	.30
(c) For copies of plant patents in color	1.00
(d) For certified copies of patents in print:	
For specification and drawing, per copy	.50
For the certificate	1.00
For the grant	1.00
(e) For abstracts of title to each patent or application:	
For the search, 1 hour or less, and certificate	$5.00
Each additional hour or fraction thereof	2.50
For each brief from the digest of assignments, of 200 words or less	2.00
Each additional 100 words or fraction thereof	.20
(f) For title reports required for Office use	1.00

(g) For translations from foreign languages into English, made only of references cited in applications or of papers filed in the Patent and Trademark Office insofar as facilities may be available: Written translations, for every 100 words of the original language, or fraction thereof	$5.00
(h) For registration of an attorney or agent:	
For admission to examination for registration to practice, fee payable upon application	35.00
On registration to practice	25.00
(i) For certificate of good standing as an attorney or agent	5.00
(j) For making patent drawings, when facilities are available, the cost for making the same:	
Rate per hour	12.00
Minimum charge per sheet	25.00
(k) For correcting patent drawings, the cost of making the correction,	
Rate per hour	12.00
Minimum charge	3.00
(l) The fee for obtaining a microfiche copy of an available microfiche, per microfiche	1.00
(m) [Reserved]	
(n) Search of Patent and Trademark Office records for purposes not otherwise specified in this rule, per half-hour of search or fraction thereof	3.00
(o) [Reserved]	
(p) Subscription order for printed copies of patents as issued:	
Annual service charge for entry of order and one subclass	2.00
And for each additional subclass included; amount to be deposited (for price of copies supplied), as determined with respect to each order	.20
(q) List of U.S. Patents:	
All patents in a subclass, per sheet (containing 100 patent numbers or less)	1.00
Patents in a subclass, limited by date or patent number, per sheet (containing 50 patent numbers or less)	1.00
(r) Local delivery box rental, annual	12.00
(s) For publication in the *Official Gazette* of a notice of the availability of a patent for licensing or sale, each patent	3.00
(t) For special service to expedite furnishing items or services ahead of regular order:	
On orders for copies of U.S. patents and trademark registrations, in addition to the charge for the copies, for each copy ordered	.50
On all other orders or requests for which special service facilities are available, in addition to the regular charge, a special service charge equal to the amount of regular charge; minimum special service charge per order or request	1.00
(u) Deposit account: Service charge for each month when the balance at the end of the month is below $40	2.00
(v) For items and services, that the Commissioner finds may be supplied, for which fees are not specified by statute or by this section, such charges as may be determined by the Commissioner with respect to each such item or service.	
(w) For preparing an international-type search report of an international-type search made at the time of the first action on the merits in a national patent application	$25.00
(x) To file a request for reexamination	1,500.00.

NOTE: The Patent and Trademark Office does not require that a formal report be prepared of an international-type search in order to obtain a search fee refund in a later filed international application. For fees relating to processing of international applications, see § 1.445.

(66 Stat. 796; 35 U.S.C. 6, 41; Pub. L. 94-131, 89 Stat. 685)

[24 FR 10332, Dec. 22, 1959, as amended at 25 FR 4679, May 27, 1960; 30 FR 6391, May 7, 1965; 30 FR 12844, Oct. 8, 1965; 31 FR 7284, May 19, 1966; 34 FR 2207, Feb. 14, 1969; 36 FR 12617, July 2, 1971; 40 FR 57358, Dec. 9, 1975; 43 FR 20462, May 11, 1978; 46 FR 2612, Jan. 12, 1981; 46 FR 24179, Apr. 30, 1981]

§ 1.22 Fees payable in advance.

Fees and charges payable to the Patent and Trademark Office are required to be paid in advance, that is, at the time of making application for any action by the Office for which a fee or charge is payable.

§ 1.23 Method of payment.

All payments of money required for Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), should be made in U.S. specie, Treasury notes, national bank notes, post office money orders, or by certified check. If sent in any other form, the Office may delay or cancel the credit until collection is made. Money orders and checks must be made payable to the Commissioner of Patents and Trademarks. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Patent and Trademark Office will be at the risk of the sender; letters containing money should be registered.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20462, May 11, 1978]

§ 1.24 Coupons.

Coupons in denominations of twenty cents and fifty cents are sold by the Patent and Trademark Office for the convenience of regular purchasers of U.S. patents, designs, and trademark registrations; these coupons may not be used for any other purpose. The 20-cent coupons are sold individually and in books of 50 with stubs for record for $10. The 50-cent coupons are sold individually and in pads of 10 for $5 and in books of 50 with stubs for record for $25. These coupons are good until used; they may be transferred but cannot be redeemed.

NOTE: Public document coupons issued by the Superintendent of Documents cannot be used in the Patent and Trademark Office, nor can the coupons issued by the Patent and Trademark Office be used at the Government Printing Office or elsewhere.

[30 FR 12844, Oct. 8, 1965, as amended at 34 FR 18857, Nov. 26, 1969]

§ 1.25 Deposit accounts.

(a) For the convenience of attorneys, agents, and the general public in ordering services offered by the Office, copies of records, etc., special deposit accounts may be established in the Patent and Trademark Office. A minimum deposit of $50 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all services, copies, etc., requested must always be on deposit. A service charge will be assessed for each month that the balance at the end of the month is below $40.

(b) Filing, issue, appeal, international-type search report, international application processing, and petition fees may be charged against these accounts.

(Pub. L. 94-131, 89 Stat. 685)

[40 FR 57359, Dec. 9, 1975, and 43 FR 20462, May 11, 1978]

§ 1.26 Refunds.

(a) Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw his application or to withdraw an appeal, will not entitle a party to demand such a return. Amounts of fifty cents or less will not be returned unless specifically demanded within a reasonable time, nor will the payer be notified of such amount; amounts over fifty cents but less than one dollar may be returned in postage stamps, and other amounts by check or, if requested, by credit to a deposit account.

(b) Refund of a portion of any international search fee paid to the Patent and Trademark Office may be made where the prior art search made during the subsequent examination of a national application is wholly or partly based on the earlier international search made in the international application for which the search fee was paid. The amount of the refund will be as determined by the examiner according to the value of the prior international search made by the Patent and Trademark Office as an International Searching Authority, as 90 percent, 45 percent, or 0 percent of the international search fee. If the amount of the refund is not a multiple of $5, it will be rounded to the next higher multiple of $5. (Note § 1.446 for refund of the search fee in an international application.)

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $1,200.00 will be made to the requestor of the proceeding. Reexamination requestors should indicate whether any refund should be made by check or by credit to a deposit account.

(35 U.S.C. 6 and 41)

[46 FR 24179, Apr. 30, 1981]

Subpart B—National Processing Provisions

PROSECUTION OF APPLICATION AND APPOINTMENT OF ATTORNEY OR AGENT

§ 1.31 Applicants may be represented by an attorney or agent.

An applicant for patent may file and prosecute his own case, or he may be represented by an attorney or agent authorized to practice before the Patent and Trademark Office in patent cases. The Patent and Trademark Office cannot aid in the selection of an attorney or agent.

§ 1.32 Prosecution by assignee.

The assignee of record of the entire interest in an application for patent is entitled to conduct the prosecution of the application to the exclusion of the inventor.

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) The residence and post office address of the applicant must appear in the oath or declaration if not stated elsewhere in the application. The applicant may also specify and an attorney or agent of record may specify a correspondence address to which communications about the application are to be directed. All notices, official letters, and other communications in the case will be directed to the correspondence address or, if no such correspondence address is specified, to an attorney or agent of record (see § 1.34(b)), or, if no attorney or agent is of record, to the applicant, or to any assignee of record of the entire interest if the applicant or such assignee so requests, or to an assignee of an undivided part if the applicant so requests, at the post office address of which the Office has been notified in the case. Amendments and other papers filed in the application must be signed: (1) By the applicant, or (2) if there is an assignee of record of an undivided part interest, by the applicant and such assignee, or (3) if there is an assignee of record of the entire interest, by such assignee, or (4) by an attorney or agent of record, or (5) by a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a). Double correspondence with an applicant and his attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent be made of record and a correspondence address has not been specified, correspondence will be held with the one last made of record.

(b) An applicant who has not made of record a registered attorney or agent may be required to state whether he received assistance in the preparation or prosecution of his application, for which any compensation or consideration was given or charged, and if so, to disclose the name or names of the person or persons providing such assistance. This includes the preparation for the applicant of the specification and amendments or other papers to be filed in the Patent and Trademark Office, as well as other assistance in such matters, but does not include merely making drawings by draftsmen or stenographic services in typing papers.

(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record (see § 1.34(b)) in the patent file at the address listed on the register of patent attorneys and agents maintained pursuant to §§ 1.341 and 1.347 or, if no attorney or agent is of record, to the patent owner or owners at the address or addresses of record. Amendments and other papers filed in a reexamination proceeding on behalf of the patent owner must be signed by the patent owner, or if there is more than one owner by all the owners, or by an attorney or agent of record in the patent file, or by a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a). Double correspondence with the patent owner or owners and the patent owner's attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent is of record and a correspondence address has not been specified, correspondence will be held with the last attorney or agent made of record.

[36 FR 12617, July 2, 1971, as amended at 46 FR 29181, May 29, 1981]

§ 1.34 Recognition for representation.

(a) When a registered attorney or agent acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the Patent and Trademark Office that under the provisions of this part and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the attorney or agent should specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required.

(b) When an attorney or agent shall have filed his or her power of attorney, or authorization, duly executed by the person or persons entitled to prosecute an application or a patent involved in a reexamination proceeding, he or she is a principal attorney of record in the case. A principal attorney or agent, so appointed, may appoint an associate attorney or agent who shall also then be of record.

[46 FR 29181, May 29, 1981]

§ 1.36 Revocation of power of attorney or authorization; withdrawal of attorney or agent.

A power of attorney or authorization of agent may be revoked at any stage in the proceedings of a case, and an attorney or agent may withdraw, upon application to and approval by the Commissioner. An attorney or agent, except an associate attorney or agent whose address is the same as that of the principal attorney or agent, will be notified of the revocation of his or her power of attorney or authorization, and the applicant or patent owner will be notified of the withdrawal of the attorney or agent. An assignment will not of itself operate as a revocation of a power or authorization previously given, but the assignee of the entire interest may revoke previous powers and be represented by an attorney or agent of his or her own selection.

[46 FR 29182, May 29, 1981]

WHO MAY APPLY FOR A PATENT

AUTHORITY: Secs. 1.41 to 1.47 also issued under 35 U.S.C. 111, 116, 117, 118.

§ 1.41 Applicant for patent.

(a) A patent must be applied for and the application papers must be signed and the necessary oath or declaration executed by the actual inventor in all cases, except as provided by §§ 1.42, 1.43 and 1.47. (See § 1.60)

(b) Unless the contrary is indicated, the word "applicant" when used in these sections refers to the inventor, joint inventors who have applied for a patent, or to the person mentioned in §§ 1.42, 1.43, or § 1.47 who has applied for a patent in place of the inventor.

[24 FR 10332, Dec. 22, 1959, as amended at 36 FR 12690, July 3, 1971]

§ 1.42 When the inventor is dead.

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may sign the application papers and make the necessary oath or declaration, and apply for and obtain the patent. Where the inventor dies during the time intervening between the filing of his application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention by him.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964]

§ 1.43 When the inventor is insane or legally incapacitated.

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may sign the application papers and make the necessary oath or declaration, and apply for and obtain the patent.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964]

§ 1.44 Proof of authority.

In the cases mentioned in §§ 1.42 and 1.43, proof of the power or authority of the legal representative must be recorded in the Patent and Trademark Office or filed in the application before the grant of a patent.

§ 1.45 Joint inventors.

(a) Joint inventors must apply for a patent jointly and each must sign the application papers and make the required oath or declaration: neither of them alone, nor less than the entire number, can apply for a patent for an invention invented by them jointly, except as provided in § 1.47.

(b) If an application for patent has been made through error and without any deceptive intention by two or more persons as joint inventors when they were not in fact joint inventors, the application may be amended to remove the names of those not inventors upon filing a statement of the facts verified by all of the original applicants, and an oath or declaration as required by § 1.65 by the applicant who is the actual inventor, provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

(c) If an application for patent has been made through error and without any deceptive intention by less than all the actual joint inventors, the application may be amended to include all the joint inventors upon filing a statement of the facts verified by, and an oath or declaration as required by § 1.65 executed by, all the actual joint inventors, provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964]

§ 1.46 Assigned inventions and patents.

In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made by the inventor or one of the persons mentioned in §§ 1.42, 1.43, or 1.47. However, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in § 1.334.

§ 1.47 Filing by other than inventor.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. Such application must be accompanied by proof of the pertinent facts and must state the last known address of the omitted inventor. The Patent and Trademark Office shall forward notice of the filing of the application to the omitted inventor at said address. Should such notice be returned to the Office undelivered, or should the address of the omitted inventor be unknown, notice of the filing of the application shall be published in the *Official Gazette*. The omitted inventor may subsequently join in the application on filing an oath or declaration of the character required by § 1.65. A patent may be granted to the inventor making the application, upon a showing satisfactory to the Commissioner, subject to the same rights which the omitted inventor would have had if he had been joined.

(b) Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for the inventor. Such application must be accompanied by proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, and must state the last known address of the inventor. The assignment, written agreement to assign or other evidence of proprietary interest, or a verified copy thereof, must be filed in the Patent and Trademark Office. The Office shall forward notice of the filing of the application to the inventor at the address stated in the application. Should such notice be returned to the Office undelivered, or should the address of the inventor be unknown, notice of the filing of the application shall be published in the *Official Gazette*. The inventor may subsequently join in the application on filing an oath or declaration of the character required by § 1.65. A patent may be granted to the inventor upon a showing satisfactory to the Commissioner.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964; 34 FR 18857, Nov. 26, 1969]

THE APPLICATION

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Commissioner of Patents and Trademarks. A complete application comprises:

(1) A specification, including a claim or claims, see §§ 1.71 to 1.77.

(2) An oath or declaration, see §§ 1.65 and 1.68.

(3) Drawings, when necessary, see §§ 1.81 to 1.88.

(4) The prescribed filing fee. (See 35 U.S.C. section 41 for filing fees.)

(b) Applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. See §§ 1.97 through 1.99.

[42 FR 5593, Jan. 28, 1977]

§ 1.52 Language, paper, writing, margins.

(a) The application, any amendments or corrections thereto, and the oath or declaration must be in the English language except as provided for in § 1.69, or be accompanied by a verified translation of the application and a translation of any corrections or amendments into the English language. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written, typed, or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing, typing, or printing thereon to permit the direct production of readily legible copies in any number by use of photographic, electrostatic, photooffset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

(b) The application papers (specification, including claims, abstract, oath or declaration, and papers as provided for in §§ 1.42, 1.43, 1.47, etc.) and also papers subsequently filed, must be plainly written on but one side of the paper. The size of all sheets of paper should be 8 to 8½ by 10½ to 13 inches (20.3 to 21.6 cm. by 26.6 to 33.0 cm.). A margin of at least approximately one inch (2.5 cm.) must be reserved on the left-hand of each page. The top of each page of the application, including claims must have a margin of at least approximately ¾ inch (2 cm.). The lines of text must not be crowded too closely together; typewritten lines should be 1½ or double spaced. The pages of the application, including claims and abstract, should be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text.

(c) Any interlineation, erasure, or cancellation or other alteration of the application papers as filed must have been made before the application was signed and sworn to or declaration made, and should be dated and initialed or signed by the applicant in a marginal note or footnote on the same sheet of paper to indicate such fact. No such alterations are permissible after execution of the application papers. (See § 1.56.)

(Pub. L. 94-131, 89 Stat. 685)

[37 FR 21994, Oct. 18, 1972, as amended at 43 FR 20462, May. 11, 1978]

§ 1.53 Application accepted and filed for examination only when complete.

(a) An application for a patent will not be accepted and placed upon the files for examination until all its required parts, complying with the rules relating thereto, are received, except that certain minor informalities may be waived subject to subsequent correction whenever required.

(b) If the papers and parts are incomplete, or so defective that they cannot be accepted as a complete application for examination, the applicant will be notified; the papers will be held six months for completion and, if not by then completed, will thereafter be returned or otherwise disposed of; the fee, if submitted, will be refunded.

§ 1.54 Parts of application to be filed together.

It is desirable that all parts of the complete application be deposited in the Office together; otherwise a letter must accompany each part, accurately and clearly connecting it with the other parts of the application.

§ 1.55 Serial number and filing date of application.

(a) Complete applications are numbered in regular order, and the applicant will be informed of the serial number and filing date of the application by a filing receipt. The filing date of the application is the date on which the complete application, acceptable for placing on the files for examination is received in the Patent and Trademark Office; or the date on which the last part completing such application is received in the case of an incomplete or defective application completed within six months.

(b) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U.S.C. 119. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath or declaration as required by § 1.65. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U.S.C. 119 must be filed in the case of interference (§ 1.224); when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner; and in all other cases they must be filed not later than the date the issue fee is paid. If the papers filed are not in the English language, a translation need not be filed except in the three particular instances specified in the preceding sentence, in which event a sworn translation or a translation certified as accurate by a sworn or official translator must be filed.

(c) An applicant may under certain circumstances claim priority on the basis of an application for an inventor's certificate in a country granting both inventor's certificates and patents. When an applicant wishes to claim the right of priority as to a claim or claims of the application on the basis of an application for an inventor's certificate in such a country under 35 U.S.C. 119, last paragraph (as amended July 28, 1972), the applicant or his attorney or agent, when submitting a claim for such right as specified in paragraph (b) of this section, shall include an affidavit or declaration including a specific statement that, upon an investigation, he has satisfied himself that to the best of his knowledge the applicant, when filing his application for the inventor's certificate, had the option to file an application either for a patent or an inventor's certificate as to the subject matter of the identified claim or claims forming the basis for the claim of priority.

(d) The filing date of an international application designating the United States of America shall be treated as the filing date in the United States of America under PCT Article 11(3), except as provided in 35 U.S.C. 102(e).

(35 U.S.C. 119; Pub. L. 94-131, 89 Stat. 685)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 12629, Aug. 2, 1969; 34 FR 18857, Nov. 26, 1969; 38 FR 9297, Apr. 13, 1973; 43 FR 20463, May 11, 1978]

EDITORIAL NOTE: Paragraph (c), added at 38 FR 9297, Apr. 13, 1973, applies only to applications filed in the United States after August 25, 1973.

§ 1.56 Duty of disclosure; fraud; striking or rejection of applications.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the inventor, on each attorney or agent who prepares or prosecutes the application and on every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application. All such individuals have a duty to disclose to the Office information they are aware of which is material to the examination of the application. Such information is material where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent. The duty is commensurate with the degree of involvement in the preparation or prosecution of the application.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility for the preparation or prosecution of the application or through an inventor who is acting in his own behalf. Disclosure to such an attorney, agent or inventor shall satisfy the duty, with respect to the information disclosed, of any other individual. Such an attorney, agent or inventor has no duty to transmit information which is not material to the examination of the application.

(c) Any application may be stricken from the files if: (1) Signed or sworn to in blank, or without actual inspection by the applicant; or

(2) Altered or partly filled in after being signed or sworn to.

(d) No patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or gross negligence. The claims in an application shall be rejected if upon examination pursuant to 35 U.S.C. 131 and 132, it is established by clear and convincing evidence (1) that any fraud was practiced or attempted on the Office in connection with the application, or in connection with any previous application upon which the application relies, or (2) that there was any violation of the duty of disclosure through bad faith or gross negligence in connection with the application, or in connection with any previous application upon which the application relies.

(e) The examination of an application for compliance with paragraph (d) of this section will normally be delayed until such time as (1) all other matters are resolved, or (2) appellant's reply brief pursuant to § 1.193(b) has been received and the application is otherwise prepared for consideration by the Board of Appeals, at which time the appeal will be suspended for examination pursuant to paragraph (d) of this section. The prosecution of the application will be reopened to the extent necessary to conduct the examination pursuant to paragraph (d) of this section including any appeal pursuant to § 1.191. If an appeal has already been filed based on a rejection on other grounds, any further rejection under this section shall be treated in accordance with § 1.193(c).

(f) Any member of the public may seek to have an application stricken from the files pursuant to paragraph (c) of this section by filing a timely petition to strike the application from the files. Any such timely petition and any accompanying papers will be entered in the application file if the petition and accompanying papers (1) specifically identify the application to which the petition is directed, and (2) are either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible. Any such petition filed by an attorney or agent must be in compliance with § 1.346.

(g) A petition to strike an application from the files submitted in accordance with the second sentence of paragraph (f) of this section will be considered by the Office. An acknowledgement of the entry of such a petition in a reissue application file will be sent to the member of the public filing the petition. A member of the public filing such a petition in an application for an original patent will not receive any communications from the Office relating to the petition, other than the return of a self-addressed postcard which the member of the public may include with the petition in order to receive an acknowledgement by the Office that the petition has been received. The Office will communicate with the applicant regarding any such petition entered in the application file and may require the applicant to respond to the Office on matters raised by the petition. The active participation of the member of the public filing a petition pursuant to paragraph (f) of this section ends with the filing of the petition and no further submission on behalf of the petitioner will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new petition.

(h) Any member of the public may seek to have the claims in an application rejected pursuant to paragraph (d) of this section by filing a timely protest in accordance with § 1.291. Any such protest filed by an attorney or agent must be in compliance with § 1.346.

(i) The Office may require applicant to supply information pursuant to paragraph (a) of this section in order for the Office to decide any issues relating to paragraphs (c) and (d) of this section which are raised by a petition or a protest, or are otherwise discovered by the Office.

[42 FR 5593, Jan. 28, 1977, as amended at 47 FR 21751, May 19, 1982]

§ 1.57 Signature.

(a) The application must be signed by the applicant in person. The signature to the oath or declaration under § 1.65 will be accepted as the signature to the application provided the oath or declaration under § 1.65 is attached to and refers to the specification and claims to which it applies. Otherwise the signature must appear at the end of the specification after the claims.

(b) The signature to the oath or declaration under § 1.70 will be accepted as the signature to the application provided the oath or declaration under § 1.70 specifically refers to the specification and claims to which it applies.

(c) Full names must be given, including at least one given name without abbreviation together with any other given name or initial.

(35 U.S.C. 6, Pub. L. 94-131, 89 Stat. 685)

[43 FR 20463, May 11, 1978]

§ 1.58 Chemical and mathematical formulas and tables.

(a) The specification, including the claims, may contain chemical and mathematical formulas, but shall not contain drawings or flow diagrams. The description portion of the specification may contain tables; claims may contain tables either if necessary to conform to 35 U.S.C. 112 or if otherwise found to be desirable.

(b) All tables and chemical and mathematical formulas in the specification, including claims, and amendments thereto, must be on paper which is flexible, strong, white, smooth, nonshiny, and durable in order to permit use as camera copy when printing any patent which may issue. A good grade of bond paper is acceptable; watermarks should not be prominent. India ink or its equivalent, or solid black typewriter, should be used to secure perfectly black solid lines.

(c) To facilitate camera copying when printing, the width of formulas and tables as presented should be limited normally to 5 inches (12.7 cm.) so that it may appear as a single column in the printed patent. If it is not possible to limit the width of a formula or table to 5 inches (12.7 cm.), it is permissible to present the formula or table with a maximum width of 10¾ inches (27.3 cm.) and to place it sideways on the sheet. Typewritten characters used in such formulas and tables must be from a block (nonscript) type font or lettering style having capital letters which are at least 0.08 inch (2.1 mm.) high (e.g., elite type). Hand lettering must be neat, clean, and have a minimum character height of 0.08 inch (2.1 mm.). A space at least ¼ inch (6.4 mm.) high should be provided between complex formulas and tables and the text. Tables should have the lines and columns of data closely spaced to conserve space, consistent with high degree of legibility.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20463, May 11, 1978]

§ 1.59 Papers of complete application not to be returned.

Papers in a complete application, including the drawings, will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost.

[36 FR 9775, May 28, 1971]

§ 1.60 Continuing application for invention disclosed and claimed in a prior application.

A continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121), which discloses and claims only subject matter disclosed in a prior application may be filed as a separate application before the patenting or abandonment of or termination of proceedings on the prior application. If the application papers comprise a copy of the prior application as filed, signing and execution by the applicant may be omitted provided the copy either is prepared and certified by the Patent and Trademark Office or is prepared by the applicant and verified by an affidavit or declaration by the applicant, his attorney or agent, stating that it is a true copy of the prior application as filed. Certification may be omitted if the copy is prepared by and does not leave the custody of the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting of the filing date.

[36 FR 12690, July 3, 1971]

§ 1.61 Filing of applications in the United States of America at a Designated Office.

(a) To maintain the benefit of the international filing date and obtain an examination as to the patentability of the invention in the United States, the applicant shall furnish to the U.S. Patent and Tradmark Office not later than the expiration of 20 months from the priority date: (1) A copy of the international application with any amendments, unless it has been previously furnished by the International Bureau or unless it was originally filed in the U.S. Patent and Trademark Office; (2) a verified translation of the international application and a translation of any amendments into the English language, if originally filed elsewhere in another language; (3) the national fee (see § 1.445(a)(4)); and (4) an oath or declaration of the inventor (see § 1.70).

(b) Where an International Searching Authority has made a declaration that no international search report will be established because the international application relates to subject matter which it is not required to search, or because the application fails to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out, the time for performing the acts referred to in paragraph (a) of this section is 2 months from the mailing date of the declaration to the applicant.

(Pub. L. 94-131, 89 Stat. 685)
[43 FR 20463, May 11, 1978]

OATH OR DECLARATION

§ 1.65 Oath or declaration.

(a)(1) The applicant, if the inventor, must state that he verily believes himself to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which he solicits a patent; that he does not know and does not believe that the same was ever known or used in the United States before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States more than one year prior to his application or patented or described in any printed publication in any country before his invention or more than one year prior to his application, or patented or made the subject of an inventor's certificate in any foreign country prior to the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. He must acknowledge a duty to disclose information he is aware of which is material to the examination of the application. He shall state whether or not any application for patent or inventor's certificate on the same invention has been filed in any foreign country, either by himself, or his legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of its filing; he shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (*a*) be sworn to (or affirmed) as provided in § 1.66, or (*b*) include the personal declaration of the applicant as prescribed in § 1.68. See § 1.153 for design cases and § 1.162 for plant cases.

(b) If the application is made as provided in §§ 1.42, 1.43, or § 1.47, the applicant shall state his relationship to the inventor and, upon information and belief, the facts which the inventor is required by this section to state.

(c) An additional statement may be required if the application has not been filed in the Patent and Trademark Office within a reasonable time after execution of the original statement.

(Sec. 1, 78 Stat. 171; 35 U.S.C. 25, 26)

[29 FR 18503 Dec. 29, 1964, as amended at 34 FR 18857, Nov. 26, 1969; 42 FR 5594, Jan. 28, 1977]

§ 1.66 Officers authorized to administer oaths.

(a) The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made. Such oath or affirmation shall be valid as to execution if it complies with the laws of the State or country where made. When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

(b) When the oath is taken before an officer in a country foreign to the United States, all the application papers, except the drawings, must be attached together and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination, but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed.

(35 U.S.C. 115)

§ 1.67 Supplemental oath or declaration for matter not originally claimed.

(a) When an applicant presents a claim for matter originally shown or described but not substantially embraced in the statement of invention or claim originally presented, he shall file a supplemental oath or declaration to the effect that the subject matter of the proposed amendment was part of his invention: That he does not know and does not believe that the same was ever known or used in the United States before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than one year before his application, or in public use or on sale in the United States for more than one year before the date of his application, that said invention has not been patented or made the subject of an inventor's certificate in any foreign country prior to the date of his application in this country on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in the United States, and has not been abandoned. Such supplemental oath or declaration should accompany and properly identify the proposed amendment, otherwise the proposed amendment may be refused consideration.

(b) In proper cases the oath or declaration here required may be made on information and belief by an applicant other than inventor.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964; 40 FR 6339, Feb. 11, 1975]

§ 1.68 Declaration in lieu of oath.

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration with the exception of testimony relating to interferences and other contested cases covered by §§ 1.271 to 1.286. Such declaration may be used in lieu of the oath otherwise required, if, and only if, the declarant is on the same document, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. The declarant must set forth in the body of the declaration that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

[34 FR 14430, Sept. 16, 1969]

§ 1.69 Foreign language oaths and declarations.

(a) Whenever an individual making an oath or declaration cannot understand English, the oath or declaration must be in a language that such individual can understand and shall state that such individual understands the content of any documents to which the oath or declaration relates.

(b) Unless the text of any oath or declaration in a language other than English is a from provided or approved by the Patent and Trademark Office, it must be accompanied by a verified English translation, except that in the case of an oath or declaration filed under § 1.65, the translation may be filed in the Office no later than two months after the filing date.

[42 FR 5594, Jan. 28, 1977]

§ 1.70 Content of oath or declaration relating to content of and amendments to an application under 35 U.S.C. 371(c)(4).

(a)(1) When an applicant of an international application, if the inventor, desires to enter the national stage under 35 U.S.C. 371, he or she must specifically identify the international application and any amendments thereto and state that he or she has reviewed the referred to application and any amendments, and that he or she verily believes himself or herself to be the original and first inventor or discoverer of the process, machine, manufacturer, composition of matter, or improvement thereof, for which he or she solicits a patent; that he or she does not know and does not believe that the same was ever known or used in the United States of America before his or her invention or discovery thereof, and shall state of what country he or she is a citizen and where he or she resides and whether he or she is a sole or joint inventor of the invention claimed in his or her international application as filed or as amended. In every application the applicant must distinctly state that to the best of his or her knowledge and belief the invention has not been in public use or on sale in the United States of America more than one year prior to his or her international application, or patented or described in any printed publication in any country before his or her invention or more than one year prior to his or her international application, or patented or made the subject of an inventor's certificate in any foreign country prior to the date of his or her international application on an application filed by himself or herself or his or her legal representatives or assigns more than twelve months prior to his or her international application. He or she must acknowledge a duty to disclose information he or she is aware of which is material to the examination of the application. He or she shall state whether or not any application for patent or inventor's certificate on the same invention has been filed in any foreign country, either by himself or herself, or by his or her legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of its filing; he or she shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the international application.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (*a*) be sworn to (or affirmed) as provided in § 1.66, or (*b*) include the personal declaration of the applicant as prescribed in § 1.68.

(b) If the international application was made as provided in §§ 1.422, 1.423 or § 1.425, the applicant shall state his or her relationship to the inventor and, upon information and belief, the facts which the inventor is required by this section to state.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20463, May 11, 1978]

SPECIFICATION

AUTHORITY: Secs. 1.71 to 1.79 also issued under 35 U.S.C. 112.

§ 1.71 Detailed description and specification of the invention.

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

§ 1.72 Title and abstract.

(a) The title of the invention, which should be as short and specific as possible, should appear as a heading on the first page of the specification, if it does not otherwise appear at the beginning of the application.

(b) A brief abstract of the technical disclosure in the specification must be set forth on a separate sheet, preferably following the claims under the heading "Abstract of the Disclosure." The purpose of the abstract is to enable the Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure. The abstract shall not be used for interpreting the scope of the claims.

(Pub. L. 94-131, 89 Stat. 685)

[31 FR 12922, Oct. 4, 1966, as amended at 43 FR 20464, May 11, 1978]

§ 1.73 Summary of the invention.

A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, should precede the detailed description. Such summary should, when set forth, be commensurate with the invention as claimed and any object recited should be that of the invention as claimed.

§ 1.74 Reference to drawings.

When there are drawings, there shall be a brief description of the several views of the drawings and the detailed description of the invention shall refer to the different views by specifying the numbers of the figures and to the different parts by use of reference letters or numerals (preferably the latter).

§ 1.75 Claim(s).

(a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.

(b) More than one claim may be presented provided they differ substantially from each other and are not unduly multiplied.

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes, also, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

(d)(1) The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. (See § 1.58(a).)

(2) See §§ 1.141 to 1.146 as to claiming different inventions in one application.

(e) Where the nature of the case admits, as in the case of an improvement, any independent claim should contain in the following order: (1) A preamble comprising a general description of all the elements or steps of the claimed combination which are conventional or known, (2) a phrase such as "wherein the improvement comprises," and (3) those elements, steps and/or relationships which constitute that portion of the claimed combination which the applicant considers as the new or improved portion.

(f) If there are several claims, they shall be numbered consecutively in Arabic numerals.

(g) All dependent claims should be grouped together with the claim or claims to which they refer to the extent possible.

[31 FR 12922, Oct. 4, 1966, as amended at 36 FR 12690, July 3, 1971; 37 FR 21995, Oct. 18, 1972; 43 FR 4015, Jan. 31, 1978]

§ 1.77 Arrangement of application elements.

The elements of the application should appear in the following order:

(a) Title of the invention; or an introductory portion stating the name, citizenship, and residence of the applicant, and the title of the invention may be used.

(b) [Reserved]

(c)(1) Cross-reference to related applications, if any.

(2) Reference to a "microfiche appendix" if any. (See § 1.96(b)). The total number of microfiche and total number of frames should be specified.

(d) Brief summary of the invention.

(e) Brief description of the several views of the drawing, if there are drawings.

(f) Detailed description.

(g) Claim or claims.

(h) Signature. (See § 1.57).

(i) Abstract of the disclosure.

(j) Drawings.

(Pub. L. 94-131, 89 Stat. 685; 35 U.S.C. 6 and 41)

[43 FR 20464, May 11, 1978, as amended at 46 FR 2612, Jan. 12, 1981]

§ 1.78 Cross-references to other applications.

(a) When an applicant files an application claiming an invention disclosed in a prior filed copending national application or international application designating the United States of America of the same applicant, the second application must contain or be amended to contain in the first sentence of the specification following the title a reference to such prior application, identifying it by serial number and filing date or international application number and international filing date and indicating the relationship of the applications, if the benefit of the filing date of such prior application is to be claimed. Cross-references to other related applications may be made when appropriate. (See § 1.14(b)).

(b) Where two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

(c) Where two or more applications, or an application and a patent naming different inventors and owned by the same party contain conflicting claims, the assignee may be called upon to state which named inventor is the prior inventor. In addition to making said statement, the assignee may also explain why an interference should be declared or that no conflict exists in fact.

(Pub. L. 94-131, 89 Stat. 685)

[31 FR 12922, Oct. 4, 1966, as amended at 36 FR 7312, Apr. 17, 1971; 43 FR 20464, May 11, 1978]

§ 1.79 Reservation clauses not permitted.

A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application, but an application disclosing unclaimed subject matter may contain a reference to a later filed application of the same applicant or owned by a common assignee disclosing and claiming that subject matter.

THE DRAWINGS

AUTHORITY: Secs. 1.81 to 1.88 also issued under 35 U.S.C. 113.

§ 1.81 Drawings required.

(a) The applicant for a patent is required to furnish a drawing of his invention where necessary for the understanding of the subject matter sought to be patented; this drawing must be filed with the application.

(b) Drawings may include illustrations which facilitate an understanding of the invention (for example, flow sheets in cases of processes, and diagrammatic views).

(c) Whenever the nature of the subject matter sought to be patented admits of illustration by a drawing without its being necessary for the understanding of the subject matter and the applicant has not furnished such a drawing, the examiner will require its submission within a time period of not less than two months from the date of the sending of a notice thereof.

(d) Drawings submitted after the filing date of the application may not be used to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.

[43 FR 4015, Jan. 31, 1978]

§ 1.83 Content of drawing.

(a) The drawing must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g. a labeled rectangular box).

(b) When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

(c) Where the drawings do not comply with the requirements of paragraphs (a) and (b) of this section, the examiner shall require such additional illustration within a time period of not less than two months from the date of the sending of a notice thereof. Such corrections are subject to the requirements of § 1.81(d).

[31 FR 12923, Oct. 4, 1966, as amended at 43 FR 4015, Jan. 31, 1978]

§ 1.84 Standards for drawings.

(a) *Paper and ink.* Drawings must be made upon paper which is flexible, strong, white, smooth, non-shiny and durable. Two-ply or three-ply bristol board is preferred. The surface of the paper should be calendered and of a quality which will permit erasure and correction with India ink. India ink, or its equivalent in quality, is preferred for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not normally acceptable.

(b) *Size of sheet and margins.* The size of the sheets on which drawings are made may either be exactly 8½ by 14 inches (21.6 by 35.6 cm.) or exactly 21.0 by 29.7 cm. (DIN size A4). All drawing sheets in a particular application must be the same size. One of the shorter sides of the sheet is regarded as its top.

(1) On 8½ by 14 inch drawing sheets, the drawing must include a top margin

of 2 inches (5.1 cm.) and bottom and side margins of ¼ inch (6.4 mm.) from the edges, thereby leaving a "sight" precisely 8 by 11¾ inches (20.3 by 29.8 cm.). Margin border lines are not permitted. All work must be included within the "sight". The sheets may be provided with two ¼ inch (6.4 mm.) diameter holes having their centerlines spaced $\frac{11}{16}$ inch (17.5 mm.) below the top edge and 2¾ inches (7.0 cm.) apart, said holes being equally spaced from the respective side edges.

(2) On 21.0 by 29.7 cm. drawing sheets, the drawing must include a top margin of at least 2.5 cm., a left side margin of 2.5 cm., a right side margin of 1.5 cm., and a bottom margin of 1.0 cm. Margin border lines are not permitted. All work must be contained within a sight size not to exceed 17 by 26.2 cm.

(c) *Character of lines.* All drawings must be made with drafting instruments or by a process which will give them satisfactory reproduction characteristics. Every line and letter must be durable, black, sufficiently dense and dark, uniformly thick and well defined; the weight of all lines and letters must be heavy enough to permit adequate reproduction. This direction applies to all lines however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clean, sharp, and solid. Fine or crowded lines should be avoided. Solid black should not be used for sectional or surface shading. Freehand work should be avoided wherever it is possible to do so.

(d) *Hatching and shading.* (1) Hatching should be made by oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty.

(2) Heavy lines on the shade side of objects should preferably be used except where they tend to thicken the work and obscure reference characters. The light should come from the upper left-hand corner at an angle of 45°. Surface delineations should preferably be shown by proper shading, which should be open.

(e) *Scale.* The scale to which a drawing is made ought to be large enough to show the mechanism without crowding when the drawing is reduced in size to two-thirds in reproduction, and views of portions of the mechanism on a larger scale should be used when necessary to show details clearly; two or more sheets should be used if one does not give sufficient room to accomplish this end, but the number of sheets should not be more than is necessary.

(f) *Reference characters.* The different views should be consecutively numbered figures. Reference numerals (and letters, but numerals are preferred) must be plain, legible and carefully formed, and not be encircled. They should, if possible, measure at least one-eighth of an inch (3.2 mm.) in height so that they may bear reduction to one twenty-fourth of an inch (1.1 mm.); and they may be slightly larger when there is sufficient room. They should not be so placed in the close and complex parts of the drawing as to interfere with a thorough comprehension of the same, and therefore should rarely cross or mingle with the lines. When necessarily grouped around a certain part, they should be placed at a little distance, at the closest point where there is available space, and connected by lines with the parts to which they refer. They should not be placed upon hatched or shaded surfaces but when necessary, a blank space may be left in the hatching or shading where the character occurs so that it shall appear perfectly distinct and separate from the work. The same part of an invention appearing in more than one view of the drawing must always be designated by the same character, and the same character must never be used to designate different parts. Reference signs not mentioned in the description shall not appear in the drawing, and vice versa.

(g) *Symbols, legends.* Graphical drawing symbols and other labeled representations may be used for conventional elements when appropriate, subject to approval by the Office. The elements for which such symbols and labeled representations are used must be adequately identified in the specification. While descriptive matter on drawings is not permitted, suitable legends may be used, or may be required, in proper cases, as in diagrammatic views and flowsheets or to show materials or where labeled representations are employed to illustrate conventional elements. Arrows may be required, in proper cases, to show direction of movement. The lettering should be as large as, or larger than, the reference characters.

(h) [Reserved]

(i) *Views.* The drawing must contain as many figures as may be necessary to show the invention; the figures should be consecutively numbered if possible in the order in which they appear. The figures may be plain, elevation, section, or prespective views, and detail views of portions of elements, on a larger scale if necessary, may also be used. Exploded views, with the separated parts of the same figure embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When necessary, a view of a large machine or device in its entiretly may be broken and extended over several sheets if there is no loss in facility of understanding the view. Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets should be so arranged that the complete figure can be understood by laying the drawing sheets adjacent to one another. The arrangement should be such that no part of any of the figures appearing on the various sheets are concealed and that the complete figure can be understood even though spaces will occur in the complete figure because of the margins on the drawing sheets. The plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken. A moved position may be shown by a broken line superimposed upon a suitable figure if this can be done without crowding, otherwise a separate figure must be used for this purpose. Modified forms of construction can only be shown in separate figures. Views should not be connected by projection lines nor should center lines be used.

(j) *Arrangement of views.* All views on the same sheet should stand in the same direction and, if possible, stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side so that the top of the sheet with the appropriate top margin is on the right-hand side. One figure must not be placed upon another or within the outline of another.

(k) *Figure for Official Gazette.* The drawing should, as far as possible, be so planned that one of the views will be suitable for publication in the *Official Gazette* as the illustration of the invention.

(l) *Extraneous matter.* Identifying indicia (such as the attorney's docket number, inventor's name, number of sheets, etc.) not to exceed 2¾ inches (7.0 cm.) in width may be placed in a centered location between the side edges within three-fourths inch (19.1 mm.) of the top edge. Authorized security markings may be placed on the drawings provided they are outside the illustrations and are removed when the material is declassified. Other extraneous matter will not be permitted upon the face of a drawing.

(m) *Transmission of drawings.* Drawings transmitted to the Office should be sent flat, protected by a sheet of heavy binder's board, or may be rolled for transmission in a suitable mailing tube; but must never be folded. If received creased or mutilated, new drawings will be required.

(See § 1.152 for design drawing, § 1.165 for plant drawings, and § 1.174 for reissue drawings.)

(Pub. L. 94-131, 89 Stat. 685)

[24 FR 10332, Dec. 22, 1959, as amended at 31 FR 12923, Oct. 4, 1966; 36 FR 9775, May 28, 1971; 43 FR 20464, May 11, 1978; 45 FR 73657, Nov. 6, 1980]

§ 1.85 Informal drawings.

The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto, if suitable for reproduction, may be admitted but in such case the drawing must be corrected or a new one furnished, as required. The necessary corrections or mounting will be made by the Office upon applicant's request or permission and at his expense. (See §§ 1.21 and 1.165.)

[36 FR 9775, May 28, 1971]

§ 1.86 Draftsman to make drawings.

(a) Applicants are advised to employ competent draftsmen to make their drawings.

(b) The Office may furnish the drawings at the applicant's expense as promptly as its draftsmen can make them, for applicants who can not otherwise conveniently procure them. (See § 1.21.)

§ 1.88 Use of old drawings.

If the drawings of a new application are to be identical with the drawings of a previous application of the applicant on file in the Office, or with part of such drawings, the old drawings or any sheets thereof may be used if the prior application is, or is about to be, abandoned, or if the sheets to be used are cancelled in the prior application. The new application must be accompanied by a letter requesting the transfer of the drawings, which should be completely identified.

MODELS, EXHIBITS, SPECIMENS

AUTHORITY: Secs. 1.91 to 1.95 also issued under 35 U.S.C. 114.

§ 1.91 Models not generally required as part of application or patent.

Models were once required in all cases admitting a model, as a part of the application, and these models became a part of the record of the patent. Such models are no longer generally required (the description of the invention in the specification, and the drawings, must be sufficiently full and complete, and capable of being understood, to disclose the invention without the aid of a model), and will not be admitted unless specifically called for.

§ 1.92 Model or exhibit may be required.

A model, working model, or other physical exhibit, may be required if deemed necessary for any purpose on examination of the application.

§ 1.93 Specimens.

When the invention relates to a composition of matter, the applicant may be required to furnish specimens of the composition, or of its ingredients or intermediates, for the purpose of inspection or experiment.

§ 1.94 Return of models, exhibits or specimens.

Models, exhibits, or specimens in applications which have become abandoned, and also in other applications on conclusion of the prosecution, may be returned to the applicant upon demand and at his expense, unless it be deemed necessary that they be preserved in the Office. Such physical exhibits in contested cases may be returned to the parties at their expense. If not claimed within a reasonable time, they may be disposed of at the discretion of the Commissioner.

§ 1.95 Copies of exhibits.

Copies of models or other physical exhibits will not ordinarily be furnished by the Office, and any model or exhibit in an application or patent shall not be taken from the Office except in the custody of an employee of the Office specially authorized by the Commissioner.

§ 1.96 Submission of computer program listings.

Descriptions of the operation and general content of computer program listings should appear in the description portion of the specification. A computer program listing for the purpose of these rules is defined as a print-out that lists in appropriate sequence the instructions, routines, and other contents of a program for a computer. The program listing may be either in machine or machine-independent (object or source) language which will cause a computer to perform a desired procedure or task such as solve a problem, regulate the flow of work in a computer, or control or monitor events. Computer program listings may be submitted in patent applications in the following forms:

(a) *Material which will be printed in the patent.* If the computer program listing is contained on 10 printout pages or less, it must be submitted either as drawings or as part of the specification.

(1) *Drawings.* The listing may be submitted in the manner and complying with the requirements for drawings as provided in § 1.84. At least one figure numeral is required on each sheet of drawing.

(2) *Specification.* (i) The listing may be submitted as part of the specification in accordance with the provisions of § 1.52, at the end of the description but before the claims.

(ii) The listing may be submitted as part of the specification in the form of computer printout sheets (commonly 14 by 11 inches in size) for use as "camera ready copy" when a patent is subsequently printed. Such computer printout sheets must be original copies from the computer with dark solid black letters not less than 0.21 cm high, on white, unshaded and unlined paper, the printing on each sheet must be limited to an area 9 inches high by 13 inches wide, and the sheets should be submitted in a protective cover. When printed in patents, such computer printout sheets will appear at the end of the description but before the claims and will usually be reduced about ½ in size with two printout sheets being printed as one patent specification page. Any amendments must be made by way of submission of a substitute sheet if the copy is to be used for camera ready copy.

(b) *As an appendix which will not be printed.* If a computer program listing printout is 11 or more pages long, applicants may submit such listing in the form of microfiche, referred to in the specification (see § 1.77 (c)(2)). Such microfiche filed with a patent application is to be referred to as a "microfiche appendix." The "microfiche appendix" will not be part of the printed patent. Reference in the application to the "microfiche appendix" should be made at the beginning of the specification at the location indicated in § 1.77(c)(2). Any amendments thereto must be made by way of revised microfiche. All computer program listings submitted on paper will be printed as part of the patent.

(1) *Availability of appendix.* Such computer program listings on microfiche will be available to the public for inspection, and paper or microfiche copies thereof will be separately available for purchase, after a patent based on such an application is granted or the application is otherwise made publicly available.

(2) *Submission requirements.* Computer-generated information submitted as an appendix to an application for patent shall be in the form of microfiche in accordance with the standards set forth in the following American National (ANSI) or National Micrographics Association (NMA) Standards (Note: As new editions of these standards are published, the latest shall apply):

ANSI PH 1.28-1976—Specifications for Photographic Film for Archival Records, Silver-Gelatin Type, on Cellulose Ester Base.

ANSI PH 1.41—1976 Specifications for Photographic Film for Archival Records, Silver-Gelatin Type, on Polyester Base.

NMA-MS1 (1971) Quality Standards for Computer Output Microfilm.

ANSI/NMA MS2 (1978) Format and Coding Standards for Computer Output Microfilm.

NMA MS5 (ANSI PH 5.9-1975) Microfiche of Documents.

ANSI PH 2.19 (1959)—Diffuse Transmission Density.

except as modified or clarified below:

(i) Either Computer-Output-Microfilm (COM) output or copies of photographed paper copy may be submitted. In the former case, NMA standards MS1 and MS2 apply; in the latter case, standard MS5 applies.

(ii) Film submitted shall be first generation (camera film) negative appearing microfiche (with emulsion on the back side of the film when viewed with the images right reading).

(iii) Reduction ratio of microfiche submitted should be 24:1 or a similar ratio where variation from said ratio is required in order to fit the documents into the image area of the microfiche format used.

(iv) Film submitted shall have a thickness of at least .005 inches (0.13 mm) and not more than .009 inches (0.23 mm) for either cellulose acetate base or polyester base type.

(v) Both microfiche formats A1 (98 frames, 14 columns x 7 rows) and A3

(63 frames, 9 columns x 7 rows) which are described in NMA standard MS2 (A1 is also described in MS5) are acceptable for use in preparation of microfiche submitted.

(vi) At least the left-most 1/3 (50 mm x 12 mm) of the header or title area of each microfiche submitted shall be clear or positive appearing so that the Patent and Trademark Office can apply serial number and filing date thereto in an eye-readable form. The middle portion of the header shall be used by applicant to apply an eye-readable application identification such as the title and/or the first inventor's name. The attorney's docket number may be included. The final right-hand portion of the microfiche shall contain sequence information for the microfiche, such as 1 of 4, 2 of 4, etc.

(vii) Additional requirements which apply specifically to microfiche of filmed paper copy:

(A) The first frame of each microfiche submitted shall contain a standard test target which contains five NBS Micro-copy Resolution Test Charts (No. 1010A), one in the center and one in each corner. See illustration on page 2 of NMA Recommended Practice MS104, Inspection and Quality Control of First Generation Silver Halide Microfilm. See also paragraph 7 of NMA-MS5.

(B) The second frame of each microfiche submitted must contain a fully descriptive title and the inventor's name as filed.

(C) The pages or lines appearing on the microfiche frames should be consecutively numbered.

(D) Pagination of the microfiche frames shall be from left to right and from top to bottom.

(E) At a reduction of 24:1 resolution of the original microfilm shall be at least 120 lines per mm (5.0 target) so that reproduction copies may be expected to comply with provisions of paragraph 7.1.4 of NMA Standard MS5.

(F) Background density of negative appearing camera master microfiche of filmed paper documents shall be within the range 0.9 to 1.2 and line density should be no greater than 0.08. The density shall be visual diffuse density as measured using the method described in ANSI Standard PH 2.19.

(G) An index, when included, should appear in the last frame (lower right hand corner when data is right-reading) of each microfiche. See NMA-MS5, paragraph 6.6.

(viii) Microfiche generated by Computer Output Microfilm (COM).

(A) Background density of negative-appearing COM-generated camera master microfiche shall be within the range of 1.5 to 2.0 and line density should be no greater than 0.2. The density shall be visual diffuse density as described in ANSI PH 2.19.

(B) The first frame of each microfiche submitted should contain a resolution test frame in conformance with NMA standard MS1.

(C) The second frame of each microfiche submitted must contain a fully descriptive title and the inventor's name as filed.

(D) The pages or lines appearing on the microfiche frames should be consecutively numbered.

(E) It is preferred that pagination of the microfiche frames be from left to right and top to bottom but the alternative, i.e., from top to bottom and from left to right, is also acceptable.

(F) An index, when included, should appear on the last frame (lower right hand corner when data is right reading) of each microfiche.

(G) Amendment of microfiche must be made by way of replacement microfiche.

(35 U.S.C. 6 and 41)

[46 FR 2612, Jan. 12, 1981]

PRIOR ART STATEMENT

§ 1.97 Filing of prior art statement.

(a) As a means of complying with the duty of disclosure set forth in § 1.56, applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. The statement may either be separate from the specification or may be incorporated therein.

(b) The statement shall serve as a representation that the prior art listed therein includes, in the opinion of the person filing it, the closest prior art of which that person is aware; the statement shall not be construed as a representation that a search has been made or that no better art exists.

[42 FR 5594, Jan. 28, 1977]

§ 1.98 Content of prior art statement.

(a) Any statement filed under § 1.97 or § 1.99 shall include: (1) A listing of patents, publications or other information and (2) a concise explanation of the relevance of each listed item. The statement shall be accompanied by a copy of each listed patent or publication or other item of information in written form or of at least the portions thereof considered by the person filing the statement to be pertinent.

(b) When two or more patents or publications considered material are substantially identical, a copy of a representative one may be included in the statement and others merely listed. A translation of the pertinent portions of foreign language patents or publications considered material should be transmitted if an existing translation is readily available to the applicant.

[42 FR 5594, Jan. 28, 1977]

§ 1.99 Updating of prior art statement.

If prior to issuance of a patent an applicant, pursuant to his duty of disclosure under § 1.56, wishes to bring to the attention of the Office additional patents, publications or other information not previously submitted, the additional information should be submitted to the Office with reasonable promptness. It may be included in a supplemental prior art statement or may be incorporated into other communications to be considered by the examiner. Any transmittal of additional information shall be accompanied by explanations of relevance and by copies in accordance with the requirements of § 1.98.

[42 FR 5594, Jan. 28, 1977]

EXAMINATION OF APPLICATIONS

AUTHORITY: Secs. 1.101 to 1.108 also issued under 35 U.S.C. 131, 132.

§ 1.101 Order of examination.

(a) Applications filed in the Patent and Trademark Office and accepted as complete applications (§§ 1.53 and 1.55) are assigned for examination to the respective examining groups having the classes of inventions to which the applications relate. Applications shall be taken up for examination by the examiner to whom they have been assigned in the order in which they have been filed except for those applications in which the Office has accepted a request filed under § 1.139.

(b) Applications which have been acted upon by the examiner, and which have been placed by the applicant in condition for further action by the examiner (amended applications) shall be taken up for action in such order as shall be determined by the Commissioner.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 13470, Sept. 30, 1964; 33 FR 5624, Apr. 11, 1968; 34 FR 18857, Nov. 26, 1969]

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Commissioner to expedite the business of the Office, or upon a verified showing which, in the opinion of the Commissioner, will justify so advancing it.

(b) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and the head of some department of the Government requests immediate action for that reason, may be advanced for examination.

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted at the request of the applicant for good and sufficient cause and for a reasonable time specified. Only one suspension may be granted by the primary examiner; any further suspension must be approved by the Commissioner.

(b) If action on an application is suspended when not requested by the applicant, the applicant shall be notified of the reasons therefor.

(c) Action by the examiner may be suspended by order of the Commissioner in the case of applications owned by the United States whenever publication of the invention by the granting of a patent thereon might be detrimental to the public safety or defense, at the request of the appropriate department or agency.

(d) Action on applications in which the Office has accepted a request filed under § 1.139 will be suspended for the entire pendency of these applications except for purposes relating to proceedings under § 1.201(b).

[24 FR 10332, Dec. 22, 1959, as amended at 33 FR 5624, Apr. 11, 1968]

§ 1.104 Nature of examination; examiner's action.

(a) On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(b) The applicant, or in the case of a reexamination proceeding, both the patent owner and the requester, will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated and such information or references will be given as may be useful in aiding the applicant, or in the case of a reexamination proceeding the patent owner, to judge the propriety of continuing the prosecution.

(c) An international-type search will be made in all national applications filed on and after June 1, 1978.

(d) Any national application may also have an international-type search report prepared thereon at the time of the national examination on the merits, upon specific written request therefor and payment of the international-type search report fee. See § 1.21(w) for amount of fee for preparation of international-type search report.

NOTE: The Patent and Trademark Office does not require that a formal report of an international-type search be prepared in order to obtain a search fee refund in a later filed international application.

(Pub. L. 94-131, 89 Stat. 685; 35 U.S.C. 6)

[24 FR 10332, Dec. 22, 1959, as amended at 43 FR 20465, May 11, 1978; 46 FR 29182, May 29, 1981]

§ 1.105 Completeness of examiner's action.

The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

§ 1.106 Rejection of claims.

(a) If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected.

(b) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

(c) In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability and, insofar as rejections in applications are concerned, may also rely upon facts within his or her knowledge pursuant to § 1.107.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969; 47 FR 21752, May 19, 1982]

§ 1.107 Citation of references.

(a) If domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees, and the classes of inventions must be stated. If foreign published applications or patents are cited, their nationality or country, numbers and dates, and the names of the patentees must be stated, and such other data must be furnished as may be necessary to enable the applicant, or in the case of a reexamination proceeding, the patent owner, to identify the published applications or patents cited. In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon must be identified. If printed publications are cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, shall be given.

(b) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

[46 FR 29182, May 29, 1981]

§ 1.108 Abandoned applications not cited.

Abandoned applications as such will not be cited as references except those which have become abandoned as a result of the filing and acceptance of a request under § 1.139.

[33 FR 5624, Apr. 11, 1968]

§ 1.109 Reasons for allowance.

If the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning. The reasons shall be incorporated into an Office action rejecting other claims of the application or patent under reexamination or be the subject of a separate communication to the applicant or patent owner. The applicant or patent owner may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure to file such a statement shall not give rise to any implication that the applicant or patent owner agrees with or acquiesces in the reasoning of the examiner.

[46 FR 29182, May 29, 1981]

ACTION BY APPLICANT AND FURTHER CONSIDERATION

AUTHORITY: Secs. 1.111 to 1.113 also issued under 35 U.S.C. 132.

§ 1.111 Reply by applicant or patent owner.

(a) After the Office action, if adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply thereto and may request reconsideration or further examination, with or without amendment.

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must make request therefor in writing. The reply by the applicant or patent owner must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office action. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the case to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

(c) In amending in response to a rejection of claims in an application or patent undergoing reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must also show how the amendments avoid such references or objections. (See §§ 1.135 and 1.136 for time for reply.)

[46 FR 29182, May 29, 1981]

§ 1.112 Reconsideration.

After response by applicant or patent owner (§ 1.111), the application or patent under reexamination will be reconsidered and again examined. The applicant or patent owner will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination. Applicant or patent owner may respond to such Office action in the same manner provided in § 1.111, with or without amendment. Any amendments after the second Office action must ordinarily be restricted to the rejection or to the objections or requirements made. The application or patent under reexamination will be again considered, and so on repeatedly, unless the examiner has indicated that the action is final.

[46 FR 29182, May 29, 1981]

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration the rejection or other action may be made final, whereupon applicant's or patent owner's response is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Response to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the response to a final rejection or action must comply with any requirements or objection as to form.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the case, clearly stating the reasons therefor.

[24 FR 10332, Dec. 22, 1959, as amended at 46 FR 29182, May 29, 1981]

AMENDMENTS

AUTHORITY: Secs. 1.115 to 1.127 also issued under 35 U.S.C. 132.

§ 1.115 Amendment.

The applicant may amend before or after the first examination and action and also after the second or subsequent examination or reconsideration as specified in § 1.112 or when and as specifically required by the examiner. The patent owner may amend in accordance with §§ 1.510(e) and 1.530(b) prior to reexamination, and during reexamination proceedings in accordance with §§ 1.112 and 1.116.

[46 FR 29183, May 29, 1981]

§ 1.116 Amendments after final action.

(a) After final rejection or action (§ 1.113) amendments may be made cancelling claims or complying with any requirement of form which has been made. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after final rejection, and any proceedings relative thereto, shall not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135.

(b) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

(c) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in § 1.198, or to carry into effect a recommendation under § 1.196.

[24 FR 10332, Dec. 22, 1959, as amended at 46 FR 29183, May 29, 1981]

§ 1.117 Amendment and revision required.

The specification, claims and drawing must be amended and revised when required, to correct inaccuracies of description and definition or unnecessary prolixity, and to secure correspondence between the claims, the specification and the drawing.

§ 1.118 Amendment of disclosure.

In original applications, all amendments of the drawings or specifications, and all additions thereto, must conform to at least one of them as it was at the time of the filing of the application. Matter not found in either, involving a departure from or an addition to the original disclosure, cannot be added to the application even though supported by a supplemental oath, and can be shown or claimed only in a separate application.

§ 1.119 Amendment of claims.

The claims may be amended by canceling particular claims, by presenting new claims, or by rewriting particular claims as indicated in § 1.121. The requirements of § 1.111 must be complied with by pointing out the specific distinctions believed to render the claims patentable over the references in presenting arguments in support of new claims and amendments.

[32 FR 13583, Sept. 28, 1967]

§ 1.121 Manner of making amendments.

(a) Erasures, additions, insertions, or alterations of the Office file of papers and records must not be physically entered by the applicant. Amendments to the application (excluding the claims) are made by filing a paper (which should conform to § 1.52), directing or requesting that specified amendments be made. The exact word or words to be stricken out or inserted by said amendment must be specified and the precise point indicated where the deletion or insertion is to be made.

(b) Except as otherwise provided herein, a particular claim may be amended only by directions to cancel or by rewriting such claim with underlining below the word or words added and brackets around the word or words deleted. The rewriting of a claim in this form will be construed as directing the cancellation of the original claim; however, the original claim number followed by the parenthetical word "amended" must be used for the rewritten claim. If a previously rewritten claim is rewritten, underlining and bracketing will be applied in reference to the previously rewritten claim with the parenthetical expression "twice amended," "three times amended," etc., following the original claim number.

(c) A particular claim may be amended in the manner indicated for the application in paragraph (a) of this section to the extent of corrections in spelling, punctuation, and typographical errors. Additional amendments in this manner will be admitted provided the changes are limited to: (1) Deletions and/or (2) the addition of no more than five words in any one claim. Any amendment submitted with instructions to amend particular claims but failing to conform to the provisions of paragraphs (b) and (c) of this section may be considered nonresponsive and treated accordingly.

(d) Where underlining or brackets are intended to appear in the printed patent or are properly part of the claimed material and not intended as symbolic of changes in the particular claim, amendment by rewriting in accordance with paragraph (b) of this section shall be prohibited.

(e) In reissue applications, both the descriptive portion and the claims are to be amended as specified in paragraph (a) of this section.

(f) Proposed amendments presented in patents involved in reexamination proceedings must be presented in the form of a full copy of the text of: (1) Each claim which is amended and (2) each paragraph of the description which is amended. Matter deleted from the patent shall be placed between brackets and matter added shall be underlined. Copies of the printed claims from the patent may be used with any additions being indicated by carets and deleted material being placed between brackets. Claims must not be renumbered and the numbering of the claims added for reexamination must follow the number of the highest numbered patent claim. No amendment may enlarge the scope of the claims of the patent. No new matter may be introduced into the patent.

[32 FR 13583, Sept. 28, 1967, as amended at 46 FR 29183, May 29, 1981]

§ 1.122 Entry and consideration of amendments.

(a) Amendments are "entered" by the Office by making the proposed deletions by drawing a line in red ink through the word or words cancelled, and by making the proposed substitutions or insertions in red ink, small insertions being written in at the designated place and larger insertions being indicated by reference.

(b) Ordinarily all amendments presented in a paper filed while the application is open to amendment are entered and considered, subsequent cancellation or correction being required of improper amendments. Untimely amendatory papers may be refused entry and consideration in whole or in part.

§ 1.123 Amendments to the drawing.

(a) No change in the drawing may be made except by permission of the Office. Permissible changes in the construction shown in any drawing may be made only by the Office. A sketch in permanent ink showing proposed changes, to become part of the record, must be filed. The paper requesting amendments to the drawing should be separate from other papers.

(b) Substitute drawings will not ordinarily be admitted in any case unless required by the Office.

[24 FR 10332, Dec. 22, 1959, as amended at 36 FR 9775, May 28, 1971]

§ 1.124 Amendment of amendments.

When an amendatory clause is to be amended, it should be wholly rewritten and the original insertion canceled, so that no interlineations or deletions shall appear in the clause as finally presented. Matter canceled by amendment can be reinstated only by a subsequent amendment presenting the canceled matter as a new insertion.

§ 1.125 Substitute specification.

If the number or nature of the amendments shall render it difficult to consider the case, or to arrange the papers for printing or copying, the examiner may require the entire specification or claims, or any part thereof, to be rewritten. A substitute specification will ordinarily not be accepted unless it has been required by the examiner.

§ 1.126 Numbering of claims.

The original numbering of the claims must be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When claims are added, except when presented in accordance with § 1.121(b), they must be numbered by the applicant consecutively beginning with the number next following the highest numbered claim previously presented (whether entered or not). When the application is ready for allowance, the examiner, if necessary, will renumber the claims consecutively in the order in which they appear or in such order as may have been requested by applicant.

[32 FR 13583, Sept. 28, 1967]

§ 1.127 Petition from refusal to admit amendment.

From the refusal of the primary examiner to admit an amendment, in whole or in part, a petition will lie to the Commissioner under § 1.181.

AFFIDAVITS OVERCOMING REJECTIONS

§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.

(a) When any claim of an application is rejected on reference to a domestic patent which substantially shows or describes but does not claim the rejected invention, or on reference to a foreign patent or to a printed publication, and the applicant shall make oath or declaration as to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, then the patent or publication cited shall not bar the grant of a patent to the applicant, unless the date of such patent or printed publication be more than one year prior to the date on which the application was filed in this country.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

(35 U.S.C. 132)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969]

§ 1.132 Affidavits or declarations traversing grounds of rejection.

When any claim of an application is rejected on reference to a domestic patent which substantially shows or describes but does not claim the invention, or on reference to a foreign patent, or to a printed publication, or to facts within the personal knowledge of an employee of the Office, or when rejected upon a mode or capability of operation attributed to a reference, or because the alleged invention is held to be inoperative or lacking in utility, or frivolous or injurious to public health or morals, affidavits or declarations traversing these references or objections may be received.

(35 U.S.C. 132)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969]

INTERVIEWS

§ 1.133 Interviews.

(a) Interviews with examiners concerning applications and other matters pending before the Office must be had in the examiners' rooms at such times, within office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews for the discussion of the patentability of pending applications will not be had before the first official action thereon. Interviews should be arranged for in advance.

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for response to Office actions as specified in §§ 1.111, 1.135.

(35 U.S.C. 132)

TIME FOR RESPONSE BY APPLICANT; ABANDONMENT OF APPLICATION

AUTHORITY: Secs. 1.135 to 1.138 also issued under 35 U.S.C. 133.

§ 1.135 Abandonment for failure to respond within time limit.

(a) If an applicant fails to prosecute his application within six months after the date when the last official notice of any action by the Office was mailed to him, or within such shorter time as may be fixed (§ 1.136), the application will become abandoned.

(b) Prosecution of an application to save it from abandonment must include such complete and proper action as the condition of the case may require. The admission of an amendment not responsive to the last official action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When action by the applicant is a bona fide attempt to advance the case to final action, and is substantially a complete response to the examiner's action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

(d) Prompt ratification or filing of a correctly signed copy may be accepted in case of an unsigned or improperly signed paper. (See § 1.7.)

§ 1.136 Time less than six months.

(a) An applicant may be required to prosecute his application in a shorter time than six months, but not less than thirty days, whenever such shorter time is deemed necessary or expedient. Unless the applicant is notified in writing that response is required in less than six months, the maximum period of six months is allowed.

(b) The time for reply, when a time less than six months has been set, will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. Only one extension may be granted by the primary examiner in his discretion; any further extension must be approved by the Commissioner. In no case can any extension carry the date on which response to an action is due beyond six months from the date of the action.

[24 FR 10332, Dec. 22, 1959, as amended at 41 FR 757, Jan. 5, 1976]

§ 1.137 Revival of abandoned application.

An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by a verified showing of the causes of the delay, by the proposed response unless it has been previously filed, and by the petition fee.

§ 1.138 Express abandonment.

An application may be expressly abandoned by filing in the Patent and Trademark Office a written declaration of abandonment signed by the applicant himself and the assignee of record, if any, and identifying the application. Except as provided in § 1.262 an application may also be expressly abandoned by filing a written declaration of abandonment signed by the attorney or agent of record. Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue.

[34 FR 18857, Nov. 26, 1969]

§ 1.139 Waiver of patent rights.

An applicant may waive his rights to an enforceable patent based on a pending patent application by filing in the Patent and Trademark Office a written waiver of patent rights, a consent to the publication of an abstract, and authorization to open the complete application to inspection by the general public, and a declaration of abandonment signed by the applicant and the assignee of record or by the attorney or agent of record.

[33 FR 5624, Apr. 11, 1968]

JOINDER OF INVENTIONS IN ONE APPLICATION; RESTRICTION

AUTHORITY: Secs. 1.141 to 1.147 also issued under 35 U.S.C. 121.

§ 1.141 Different inventions in one application.

(a) Two or more independent and distinct inventions, that is, inventions which do not form a single general inventive concept, may not be claimed in one application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

(b) A group of claims of different categories in an application so linked as to form a single inventive concept are considered to be one invention. In particular any of the following groupings of claims of different categories may be included in the same application:

(1) In addition to a claim for a given product,

(i) A claim for one process specially adapted for the manufacture of the said product, as where the process of making as claimed cannot be used to make other and materially different products;

(ii) A claim for one use of the said product, as where said use as claimed cannot be practiced with another materially different product; or

(iii) Both (b)(1) (i) and (ii);

(2) In addition to a claim for a given process, a claim for one apparatus or means specifically designed for carrying out of the said process, that is, it

cannot be used to practice another materially different process.

(c) If the situation of paragraph (b)(1) of this section exists where claims to all three categories, product, process and use, are included, and the product claims are not allowable, the use and process claims are not so linked as to form a single general inventive concept. Where the process and use claims are not so joined by an allowable linking product claim, the applicant will be required to elect either the use or the process for prosecution with the product claim.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20465, May 11, 1978]

§ 1.142 Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in his action shall require the applicant in his response to that action to elect that invention to which his claim shall be restricted, this official action being called a requirement for restriction (also known as a requirement for division). If the distinctness and independence of the inventions be clear, such requirement will be made before any action on the merits; however, it may be made at any time before final action in the case at the discretion of the examiner.

(b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

§ 1.143 Reconsideration of requirement.

If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111.) In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final the examiner will at the same time act on the claims to the invention elected.

§ 1.144 Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any response due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested. (See § 1.181.)

§ 1.145 Subsequent presentation of claims for different invention.

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.

§ 1.146 Election of species.

In the first action on an application containing a generic claim and claims restricted separately to each of more than one species embraced thereby, the examiner may require the applicant in his response to that action to elect that species of his or her invention to which his or her claim shall be restricted if no generic claim is held allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the case.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20465, May 11, 1978]

DESIGN PATENTS

§ 1.151 Rules applicable.

The rules relating to applications for patents for other inventions or discoveries are also applicable to applications for patents for designs except as otherwise provided.

(35 U.S.C. 171)

§ 1.152 Drawing.

The design must be represented by a drawing made in conformity with the rules laid down for drawings of mechanical inventions and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented.

(35 U.S.C. 113, 171)

§ 1.153 Title, description and claim, oath or declaration.

(a) The title of the design must designate the particular article. No description, other than a reference to the drawing, is ordinarily required. The claim shall be in formal terms to the ornamental design for the article (specifying name) as shown, or as shown and described. More than one claim is neither required nor permitted.

(b) The oath or declaration required of the applicant must comply with § 1.65 except that the period of twelve months specified therein with respect to foreign applications is six months in the case of designs.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964]

§ 1.154 Arrangement of specification.

The following order of arrangement should be observed in framing design specifications:

(a) Preamble, stating name of the applicant and title of the design.

(b) Description of the figure or figures of the drawing.

(c) Description, if any.

(d) Claim.

(e) Signature of applicant. (See § 1.57.)

(35 U.S.C. 171)

§ 1.155 Issue and term of design patents.

(a) If, on examination, it shall appear that the applicant is entitled to a design patent under the law, a notice of allowance will be sent to him, his attorney or his agent, calling for the payment of an issue fee in an appropriate amount dependent on the duration of the term desired by the applicant. If this issue fee is not paid within 3 months of the date of the notice of allowance, the application shall be regarded as abandoned.

(b) The Commissioner may accept the late payment of the fee specified in the notice of allowance later than three months after the mailing of the notice as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by the issue fee or portion thereof specified in the notice of allowance, unless it has been previously submitted, the fee for delayed payment, and a showing in the form of an oath or declaration as to the causes of the delay.

[40 FR 44813, Sept. 30, 1975]

PLANT PATENTS

§ 1.161 Rules applicable.

The rules relating to applications for patent for other inventions or discoveries are also applicable to applications for patents for plants except as otherwise provided.

§ 1.162 Applicant, oath or declaration.

The applicant for a plant patent must be the person who has invented or discovered and asexually reproduced the new and distinct variety of plant for which a patent is sought (or as provided in §§ 1.42, 1.43, and 1.47). The oath or declaration required of the applicant, in addition to the averments required by § 1.65, must state that he has asexually reproduced the plant. Where the plant is a newly found plant the oath or declaration must also state that it was found in a cultivated area.

(35 U.S.C. 161)

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964]

§ 1.163 Specification.

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

(b) Two copies of the specification (including the claim) must be submitted, but only one need be signed and executed; the second copy may be a legible carbon copy of the original.

(35 U.S.C. 112, 162)

§ 1.164 Claim.

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

(35 U.S.C. 162)

§ 1.165 Drawings.

(a) Plant patent drawings are not mechanical drawings and should be artistically and competently executed. Figure numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings must be submitted. Color drawings may be made either in permanent water color or oil, or in lieu thereof may be photographs made by color photography or properly colored on sensitized paper. Permanently mounted color photographs are acceptable. The paper in any case must correspond in size, weight and quality to the paper required for other drawings. See § 1.84. Nonpermanently mounted copies will be correctly mounted at applicant's expense, § 1.21(v).

(35 U.S.C. 113, 161)

[24 FR 10332, Dec. 22, 1959, as amended at 40 FR 57359, Dec. 9, 1975]

§ 1.166 Specimens.

The applicant may be required to furnish specimens of the plant, or its flower or fruit, in a quantity and at a time in its stage of growth as may be designated, for study and inspection. Such specimens, properly packed, must be forwarded in conformity with instructions furnished to the applicant. When it is not possible to forward such specimens, plants must be made available for official inspection where grown.

(35 U.S.C. 114, 161)

§ 1.167 Examination.

(a) Applications may be submitted by the Patent and Trademark Office to the Department of Agriculture for study and report.

(b) Affidavits or declarations from qualified agricultural or horticultural experts regarding the novelty and distinctiveness of the variety of plant may be received when the need of such affidavits or declarations is indicated.

(35 U.S.C. 161, 164; E.O. 5464, Oct. 17, 1930)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969]

REISSUES

AUTHORITY: Secs. 1.171 to 1.179 also issued under 35 U.S.C. 251.

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report, to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

§ 1.172 Applicants, assignees.

(a) Reissue applications must be signed and sworn to or declaration made by the inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written assent of all assignees, if any, owning an undivided interest in the patent, but a reissue application may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

(b) A reissue will be granted to the original patentee, his legal representatives or assigns as the interest may appear.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 10853, Dec. 29, 1964]

§ 1.173 Specification.

The specification of the reissue application must include the entire specification and claims of the patent, with the matter to be omitted by reissue enclosed in square brackets; and any additions made by the reissue must be underlined, so that the old and the new specifications and claims may be readily compared. Claims should not be renumbered and the numbering of claims added by reissue should follow the number of the highest numbered patent claim. No new matter shall be introduced into the specification.

§ 1.174 Drawings.

(a) The drawings upon which the original patent was issued may be used in reissue applications if no changes whatsoever are to be made in the drawings. In such cases, when the reissue application is filed, the applicant must submit a temporary drawing which may consist of a copy of the printed drawings of the patent or a photoprint of the original drawings securely mounted by pasting on sheets of drawing board of the size required for original drawing, or an order for the same.

(b) Amendments which can be made in a reissue drawing, that is, changes from the drawing of the patent, are restricted.

§ 1.175 Reissue oath or declaration.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had the right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) [Reserved]

(5) Particularly specifying the errors relied upon, and how they arose or occurred.

(6) Stating that said errors arose "without any deceptive intention" on the part of the applicant.

(7) Acknowledging a duty to disclose information applicant is aware of which is material to the examination of the application.

(b) Corroborating affidavits or declarations of others may be filed and the examiner may, in any case, require additional information or affidavits or declarations concerning the application for reissue and its object.

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 18503, Dec. 29, 1964; 34 FR 18857, Nov. 26, 1969; 47 FR 21752, May 19, 1982]

§ 1.176 Examination of reissue.

An original claim, if re-presented in the reissue application, is subject to reexamination, and the entire application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications, but not sooner than two months after announcement of the filing of the reissue application has appeared in the *Official Gazette*.

[42 FR 5595, Jan. 28, 1977]

§ 1.177 Reissue in divisions.

The Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division.

Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner, all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

§ 1.178 Original patent.

The application for a reissue must be accompanied by an offer to surrender the original patent. The application should also be accompanied by the original patent, or if the original is lost or inaccessible, by an affidavit or declaration to that effect. The application may be accepted for examination in the absence of the original patent or the affidavit or declaration, but one or the other must be supplied before the case is allowed. If a reissue be refused, the original patent will be returned to applicant upon his request.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969]

§ 1.179 Notice of reissue application.

When an application for a reissue is filed, there will be placed in the file of the original patent a notice stating that an application for reissue has been filed. When the reissue is granted or the reissue application is otherwise terminated, the fact will be added to the notice in the file of the original patent.

PETITIONS AND ACTION BY THE COMMISSIONER

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the ex parte prosecution of an application which is not subject to appeal to the Board of Appeals or to the court; (2) in cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the ex parte prosecution of an application, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his decision upon the matters averred in the petition, supplying a copy thereof to the petitioner.

(d) No fee is required for a petition to the Commissioner except in the case of a petition to revive an abandoned application (§ 1.137) or for the delayed payment of an issue fee (§ 1.317).

(e) Oral hearing will not be granted except when considered necessary by the Commissioner.

(f) Except as otherwise provided in these rules, any such petition not filed within 2 months from the action complained of, may be dismissed as untimely. The mere filing of a petition will not stay the period for reply to an Examiner's action which may be running against an application, nor act as a stay of other proceedings.

(g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions under this section, with the exception of petitions under § 1.183.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18857, Nov. 26, 1969; 35 FR 4260, Mar. 7, 1970]

§ 1.182 Questions not specifically provided for.

All cases not specifically provided for in the regulations of this part will be decided in accordance with the merits of each case by or under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

§ 1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner in person on petition of the interested party, subject to such other requirements as may be imposed.

§ 1.184 Reconsideration of cases decided by former Commissioners.

Cases which have been decided by one Commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials.

APPEAL TO THE BOARD OF APPEALS

AUTHORITY: Secs. 1.191 to 1.198 also issued under 35 U.S.C. 134.

§ 1.191 Appeal to Board of Appeals.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination, any of the claims of which have been twice rejected, or who has been given a final rejection (§ 1.113), may, upon the payment of the fee required by law, appeal from the decision of the primary examiner to the Board of Appeals within the time allowed for response.

(b) The appeal in an application must identify the rejected claim or claims appealed, and must be signed by the applicant or duly authorized attorney or agent. An appeal in a reexamination proceeding must identify the rejected claim or claims appealed, and must be signed by the patent owner or duly authorized attorney or agent.

(c) Except as otherwise provided by § 1.206, an appeal when taken must be taken from the rejection of all claims under rejection which the applicant or patent owner proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

[46 FR 29183, May 29, 1981]

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. The brief must include a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved. Appellant must also indicate at the time of filing the brief if an oral hearing is desired. Upon a showing of sufficient cause, the commissioner may grant extensions of time for filing the brief. The determination of such requests may be delegated by the Commissioner to appropriate Patent and Trademark Office officials. All requests for extensions must be filed prior to the expiration of the period sought to be extended. The filing of a request for extension of time does not stay any period unless and until granted.

(b) On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

[36 FR 5850, Mar. 30, 1971, as amended at 46 FR 29183, May 29, 1981]

§ 1.193 Examiner's answer.

(a) The primary examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to the appellant's brief including such explanation of the invention claimed and of the references and grounds of rejection as may be necessary, supplying a copy to the appellant. If the primary examiner shall find that the appeal is not regular in form or does not relate to an appealable action, he shall so state and a petition from such decision may be taken to the Commissioner as provided in § 1.181.

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within twenty days from the date of such answer. However, if the examiner's answer states a new ground of rejection appellant may file a reply thereto within two months from the date of such answer; such reply may include any amendment or material appropriate to the new ground.

(c) Any decision pursuant to § 1.56(d) rejecting claims in an application already under appeal of a rejection based on other grounds shall constitute a supplemental examiner's answer introducing a new ground of rejection and removing the suspension of the appeal introduced pursuant to § 1.56(e), in which case appellant may file a reply thereto within two months from the date of the supplemental examiner's answer. Such reply will be considered and responded to as necessary. Appellant may file a reply brief directed to any such response within one month of the date of the response or within such other time as may be set in the response.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18858, Nov. 26, 1969; 47 FR 21752, May 19, 1982]

§ 1.194 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which the appellant considers such a hearing necessary or desirable for a proper presentation of his appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Appeals as appeals decided after oral hearing.

(b) If appellant requests an oral hearing, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

(c) If no request for oral hearing has been made by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given to the appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

[42 FR 5595, Jan. 28, 1977]

§ 1.195 Affidavits or declarations after appeal.

Affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

[34 FR 18858, Nov. 26, 1969]

§ 1.196 Decision by the Board of Appeals.

(a) The Board of Appeals, in its decision, may affirm or reverse the decision of the primary examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the primary examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Appeals have knowledge of any grounds not involved in the appeal for rejecting any appealed claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a rejection of the claims. The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the primary examiner. The statement shall be binding upon the primary examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the primary examiner, avoids the additional ground for rejection stated in the decision. The appellant may waive such reconsideration before the primary examiner and have the case reconsidered by the Board of Appeals upon the same record before them. Where request for such reconsideration is made the Board of Appeals shall, if necessary, render a new decision which shall include all grounds upon which a patent is refused. The appellant may waive reconsideration by the Board of Appeals and treat the decision, including the added grounds for rejection given by the Board of Appeals, as a final decision in the case.

(c) Should the decision of the Board of Appeals include an explicit statement that a claim may be allowed in amended form, appellant shall have the right to amend in conformity with such statement, which shall be binding on the primary examiner in the absence of new references or grounds of rejection.

(d) Although the Board of Appeals normally will confine its decision to a review of rejections made by the primary examiner, should it have knowledge of any grounds for rejecting any allowed claim that it believes should be considered, it may include in its decision a statement to that effect and remand the case to the primary examiner for consideration thereof. In such event, the Board shall set a period, not less than one month, within which the appellant may submit to the primary examiner an appropriate amendment, or a showing of facts or reasons, or both, in order to avoid the grounds set forth in the statement of the Board of Appeals. If the primary examiner rejects the previously allowed claim or claims on the basis of such statement, the appellant may appeal to the Board of appeals from the rejection. Whenever a decision of the Board of Appeals includes a remand, that decision shall not be considered as a final decision in the case, but the Board of Appeals shall, upon conclusion of the proceedings before the primary examiner on remand, either adopt its decision as final or render a new decision on all of the claims on appeal, as it may deem appropriate.

[24 FR 10332, Dec. 22, 1959, as amended at 46 FR 29183, May 29, 1981]

§ 1.197 Action following decision.

(a) After decision by the Board of Appeals, the case shall be returned to the primary examiner, subject to the appellant's right of appeal or other review, for such further action by the appellant or by the primary examiner, as the condition of the case may require, to carry into effect the decision.

(b) Any request for rehearing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Appeals so states. Such time may be extended by the Board of Appeals upon a showing of sufficient cause.

(c) Proceedings are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except: (1) Where claims stand allowed in an application or (2) where the nature of the decision requires further action by the examiner. In such cases, the date of termination of proceedings is the date on which the appeal is dismissed or the date on which the time for appeal to the court or review by civil action (§ 1.304) expires. If an appeal to the court or a civil action has been filed, proceedings are similarly considered terminated when the appeal or civil action is terminated.

[41 FR 757, Jan. 5, 1976, as amended at 46 FR 29184, May 29, 1981]

§ 1.198 Reopening after decision.

Cases which have been decided by the Board of Appeals will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

INTERFERENCES: DEFINITION, PREPARATION, DECLARATION

AUTHORITY: Secs. 1.201 to 1.212 also issued under 35 U.S.C. 135.

§ 1.201 Definition, when declared.

(a) An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention and may be instituted as soon as it is determined that common patentable subject matter is claimed in a plurality of applications or in an application and a patent.

(b) An interference will be declared between pending applications for patent, or for reissue, of different parties when such applications contain claims for substantially the same invention, which are allowable in the application of each party, and interferences will also be declared between pending applications for patent, or for reissue, and unexpired original or reissued patents, of different parties, when such applications and patents contain claims for substantially the same invention which are allowable in all of the applications involved, in accordance with the provisions of the regulations in this part.

(c) Interferences will not be declared nor continued, between applications or applications and patents owned by the same party unless good cause is shown therefor. The parties shall make known any and all right, title, and interest affecting the ownership of any application or patent involved or essential to the proceedings, not recorded in the Patent and Trademark Office, when an interference is declared, and of changes in such right, title, or interest, made after the declaration of the interference and before the expiration of the time prescribed for seeking review of the decision in the interference.

§ 1.202 Preparation for interference between applications; preliminary inquiry of junior applicant.

In order to ascertain whether any question of priority arises between applications which appear to interfere and are otherwise ready to be prepared for interference, any junior applicant may be called upon to state in writing under oath or declaration the date and the character of the earliest fact or act, susceptible of proof, which can be relied upon to establish conception of the invention under consideration for the purpose of establishing priority of invention. The statement filed in compliance with this section will be retained by the Patent and Trademark Office separate from the application file and if an interference is declared will be opened simultaneously with the preliminary statement of the party filing the same. In case the junior applicant makes no reply within the time specified, not less than thirty days, or if the earliest date alleged is subsequent to the filing date of the senior party, the interference ordinarily will not be declared.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18858, Nov. 26, 1969]

§ 1.203 Preparation for interference between applications; suggestion of claims for interference.

(a) Before the declaration of interference it must be determined by the examiner that there is common subject matter in the cases of the respective parties, patentable to each of the respective parties, subject to the determination of the question of priority. Claims in the same language, to form the counts of the interference, must be present or be presented, in each application; except that, in cases where, owing to the nature of the disclosures in the respective applications, it is not possible for all applications to properly include a claim in identical phraseology to define the common invention, an interference may be declared, with the approval of the Commissioner, using as a count representing the interfering subject matter a claim differing from the corresponding claims of one or more of the interfering applications by an immaterial limitation or variation.

(b) When the claims of two or more applications differ in phraseology, but relate to substantially the same patentable subject matter, the examiner shall, if it has been determined that an interference should be declared, suggest to the parties such claims as are necessary to cover the common invention in the same language. The parties to whom the claims are suggested will be required to make those claims (i.e., present the suggested claims in their applications by amendment) within a specified time, not less than 30 days, in order that an interference may be declared. The failure or refusal of any applicant to make any claim suggested within the time specified shall be taken without further action as a disclaimer of the invention covered by that claim unless the time be extended.

(c) The suggestion of claims for purpose of interference will not stay the period for response to an office action which may be running against an application, unless the claims are made by the applicant within the time specified for making the claims.

(d) When an applicant presents a claim in his application (not suggested by the examiner as specified in this section) which is copied from some other application, either for purpose of interference or otherwise, he must so state, at the time he presents the claim and identify the other application.

[24 FR 10332, Dec. 22, 1959, as amended at 30 FR 6845, May 14, 1965]

§ 1.204 Interference with a patent; affidavit or declaration by junior applicant.

(a) The fact that one of the parties has already obtained a patent will not prevent an interference. Although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who, in the interference, proves himself to be the prior inventor.

(b) When the effective filing date of an applicant is three months or less subsequent to the effective filing date of a patentee, the applicant, before the interference will be declared, shall file an affidavit or declaration that he made the invention in controversy in this country before the effective filing date of the patentee, or that his acts in this country with respect to the invention were sufficient to establish priority of invention relative to the effective filing date of the patentee.

(c) When the effective filing date of an applicant is more than 3 months subsequent to the effective filing date of the patentee, the applicant, before the interference will be declared, shall file two copies of affidavits or declarations by himself, if possible, and by one or more corroborating witnesses, supported by documentary evidence if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would prima facie entitle him to an award of priority with respect to the effective filing date of the patent. This showing must be accompanied by an explanation of the basis on which he believes that the facts set forth would overcome the effective filing date of the patent. Failure to satisfy the provisions of this section may result in summary judgment against the applicant under § 1.228. Upon a showing of sufficient cause, an affidavit or declaration on information and belief as to the expected testimony of a witness whose testimony is necessary to overcome the filing date of the patent may be accepted in lieu of an affidavit or declaration by such witness. If the examiner finds the case to be otherwise in condition for the declaration of an interference he will consider this material only to the extent of determining whether a date prior to the effective filing date of the patent is alleged, and if so, the interference will be declared. (See also § 1.228.)

[24 FR 10332, Dec. 22, 1959, as amended at 29 FR 15866, Nov. 26, 1964; 34 FR 12629, Aug. 2, 1969; 34 FR 18858, Nov. 26, 1969]

§ 1.205 Interference with a patent; copying claims from patent.

(a) Before an interference will be declared with a patent, the applicant must present in his application, copies of all of the claims of the patent which also define his invention and such claims must be patentable in the application. However, an interference may be declared after copying the claims excluding an immaterial limitation or variation if such immaterial limitation or variation is not clearly supported in the application or if the applicant otherwise makes a satisfactory showing in justification thereof.

(b) Where an applicant presents a claim copied or substantially copied from a patent, he must, at the time he presents the claim, identify the patent, give the number of the patented claim, and specifically apply the terms of the copied claim to his own disclosure, unless the claim is copied in response to a suggestion by the Office. The examiner will call to the Commissioner's attention any instance of the filing of an application or the presentation of an amendment copying or substantially copying claims from a patent without calling attention to that fact and identifying the patent.

(c) A notice that one or more claims of a patent have been copied or substantially copied by an applicant will be placed in the file of the patent, and a copy of said notice will be sent to the patentee. However, the identity of the applicant will not be disclosed to the patentee unless an interference is declared. If a final decision is made not to declare an interference, a notice to that effect will also be placed in the file of the patent and sent to the patentee.

[24 FR 10332, Dec. 22, 1959, as amended at 30 FR 6645, May 14, 1965; 43 FR 28478, June 30, 1978]

§ 1.206 Interference with a patent; claims improperly copied.

(a) Where claims are copied from a patent and the examiner is of the opinion that the applicant can make only some of the claims so copied, he shall notify the applicant to that effect, state why he is of the opinion the applicant cannot make the other claims and state further that the interference will be promptly declared. The applicant may proceed under § 1.231 if he desires to further contest his right to make the claims not included in the declaration of the interference.

(b) Where the examiner is of the opinion that none of the claims can be made, he shall reject the copied claims stating in his action why the applicant cannot make the claims and set a time limit, not less than 30 days, for reply. If, after response by the applicant, the rejection is made final, a similar time limit shall be set for appeal. Failure to respond or appeal, as the case may be, within the time fixed will, in the absence of a satisfactory showing, be deemed a disclaimer of the invention claimed.

[30 FR 6645, May 14, 1965]

§ 1.207 Preparation of interference papers and declaration of interference.

(a) When an interference is found to exist and the applications are in condition therefor, the primary examiner shall forward the files to the Board of Patent Interferences together with a statement indicating the claims of each applicant or patentee which are to form the respective counts of the interference and also indicating whether any party is entitled to the benefit of the filing date of any prior application as to the subject matter in issue, and, if so, identifying such application.

(b) A patent interference examiner will institute and declare the interference by forwarding notices to the several parties to the proceeding. Each notice shall include the name and residence of each of the other parties and those of his attorney or agent, and of any assignee, and will identify the application of each opposing party by serial number and filing date, or in the case of a patentee by the number and date of the patent. The notices shall also specify the issue of the interference, which shall be clearly and concisely defined in only as many counts as may be necessary to define the interfering subject matter (but in the case of an interference with a patent all the claims of the patent which can be made by the applicant should constitute the counts), and shall indicate the claim or claims of the respective cases corresponding to the count or counts. If the primary examiner has indicated that the patent or application of any party included in the interference is entitled to the benefit of the filing date of any prior applications as to the subject matter in issue, the notices shall so state and shall specify such prior applications. Except as noted in paragraph (e) of this section, the notices shall also set a schedule of times for taking various actions as follows:

(1) For filing the preliminary statements required by § 1.215 and serving notice of such filing, not less than 2 months from the date of declaration.

(2) For each party who files a preliminary statement to serve a copy thereof on each opposing party who also files a preliminary statement as required by § 1.215(b), not less than 15 days after the expiration of the time for filing preliminary statements.

(3) For filing motions under § 1.231, not less than 4 months from declaration.

(c) The notices of interference shall be forwarded by the patent interference examiner to all the parties, in care of their attorneys or agents; a copy of the notices will also be sent the patentees in person and, if the patent in interference has been assigned, to the assignees.

(d) When the notices sent in the interest of a patent are returned to the Office undelivered, or when one of the parties resides abroad and his agent in the United States is unknown, additional notice may be given by publication in the *Official Gazette* for such period of time as the Commissioner may direct.

(e) In a case where the showing required by § 1.204(c) is deemed insufficient (§ 1.228) the notice of interference will not set the time schedule specified in paragraph (b) of this section but will be accompanied by an order to show cause by the Board of Patent Interferences as provided by § 1.228.

[30 FR 6645, May 14, 1965, as amended at 43 FR 28478, June 30, 1978]

§ 1.208 Conflicting parties having same attorney.

Whenever it shall be found that two or more parties whose interests appear to be in conflict are represented by the same attorney or agent, the examiner shall notify each of said principal parties and the attorney or agent of this fact, and shall also call the matter to the attention of the Commissioner. If conflicting interests exist, the same attorney or agent or his associates will not be recognized to represent either of the parties whose interests are in conflict without the consent of the other party or in the absence of special circumstances requiring such representation, in further proceedings before the Patent and Trademark Office involving the matter or application or patent in which the conflicting interests exist.

§ 1.211 Jurisdiction of interference.

(a) Upon the institution and declaration of the interference, as provided in § 1.207, the Board of Patent Interferences will take jurisdiction of the same, which will then become a contested case.

(b) The primary examiner will retain jurisdiction of the case until the declaration of interference is made.

[30 FR 6645, May 14, 1965]

§ 1.212 Suspension of ex parte prosecution.

On declaration of the interference, ex parte prosecution of an application is suspended, and amendments and other papers received during the pendency of the interference will not be entered or considered without the consent of the Commissioner, except as provided by the regulations in this part. Proposed amendments directed toward the declaration of an interference with another party will be considered to the extent necessary. Ex parte prosecution as to specified matters may be continued concurrently with the interference, on order from or with the consent of the Commissioner.

INTERFERENCES: PRELIMINARY STATEMENT

AUTHORITY: Secs. 1.215 to 1.228 also issued under 35 U.S.C. 135.

§ 1.215 Preliminary statement required.

(a) Each party to the interference will be required to file a concise preliminary statement giving certain facts and dates, on or before a date fixed by the Office. The preliminary statement must be signed and sworn to or made in the form of a declaration, by the inventor but in appropriate circumstances, as when the inventor is dead or a showing is made of inability to obtain a statement from the inventor, the preliminary statement may be made by the personal representative or assignee or by someone authorized or entitled to make the statement and having knowledge of the facts.

(b) A party who files a preliminary statement shall at the same time notify all opposing parties of that fact and by the time set for that purpose he shall serve a copy of his preliminary statement and all attached documents on every opposing party from whom he has received notification of the filing of a statement.

(c) A party who fails to serve a copy of his preliminary statement as required in paragraph (b) of this section will be restricted to his effective filing date. (See § 1.223(c).)

[30 FR 6645, May 14, 1965, as amended at 34 FR 12630, Aug. 2, 1969; 34 FR 18858, Nov. 26, 1969]

§ 1.216 Contents of the preliminary statement.

(a) The preliminary statement must state that the party made the invention set forth by each count of the interference, and whether the invention was made in the United States or abroad. When the invention was made in the United States the preliminary statement must set forth as to the invention defined by each count the following facts:

(1) The date upon which the first drawing of the invention was made; if a drawing of the invention has not been made prior to the filing date of the application, it must be so stated.

(2) The date upon which the first written description of the invention was made; if a written description of the invention has not been made prior to the filing date of the application, it must be so stated.

(3) The date upon which the invention was first disclosed to another person; if the invention was not disclosed to another person prior to the filing date of the application, it must be so stated.

(4) The date of the first act or acts susceptible of proof (other than making a drawing or written description or disclosing the invention to another person) which, if proven, would establish conception of the invention, and a brief description of such act or acts; if there have been no such acts, it must be so stated.

(5) The date of the actual reduction to practice of the invention; if the invention has not been actually reduced to practice before the filing date of the application, it must be so stated.

(6) The date after conception of the invention when active exercise of reasonable diligence toward reducing the invention to practice began.

(b) When an allegation as to the first drawing (paragraph (a)(1) of this section) and/or as to the first written description (paragraph (a)(2) of this section) is made, a copy of such drawing and/or written description must be attached to the statement. (See § 1.223(c).)

(c) If a party intends to rely solely on a prior application, domestic or foreign, and on no other evidence, the preliminary statement may so state and need not be signed or sworn to or declaration made by the inventor.

[30 FR 6646, May 14, 1965, as amended at 34 FR 12630, Aug. 2, 1969; 34 FR 18858, Nov. 26, 1969]

§ 1.217 Contents of the preliminary statement; invention made abroad.

When the invention was made abroad the facts specified by § 1.216(a) (1) to (6) are not required, and in lieu thereof there should be stated:

(a) When the invention was introduced into this country by or on behalf of the party, giving the circumstances with the dates connected therewith which are relied upon to establish the fact and, when appropriate, including allegations of activity in this country of the nature of that represented by § 1.216(a) (1) to (6) and documentary attachments if the allegations relate to a drawing or written description. Such statement may be signed and sworn to, or made in the form of a declaration, either by the inventor or by one authorized to make the statement and having knowledge of the facts alleged therein.

(b) If a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, he must so state and his preliminary statement must include allegations of activity abroad corresponding to those required by § 1.216 (a) (1) to (6).

[43 FR 28478, June 30, 1978; 43 FR 57886, Dec. 11, 1978]

§ 1.218 Time for filing preliminary statement.

The time for filing the preliminary statement is ordinarily specified in the notices of interference mailed to the parties (§ 1.207). (For extension of the time set see § 1.245.)

[30 FR 6646, May 14, 1965]

§ 1.219 Statements sealed before filing.

The statement must be filed in a sealed envelope bearing the name of the party filing it and the number and title of the interference. The envelope should contain nothing but this statement and if mailed should be enclosed in an outer envelope. The statements may be opened only by an examiner of interferences.

§ 1.222 Correction of statement on motion.

In case of material error arising through inadvertence or mistake, the statement or attachments may be corrected or omitted attachments may be supplied on motion (see § 1.243), upon a satisfactory showing that such action is essential to the ends of justice. The motion must be made, if possible, before the taking of any testimony, and as soon as practicable after the discovery of the error.

[34 FR 12630, Aug. 2, 1969]

§ 1.223 Effect of statement.

(a) The preliminary statement should be carefully prepared, as a party will not be allowed to amend his statement in any way except by motion under § 1.222, and any doubts as to definiteness or sufficiency of any allegation or compliance with formal requirements will be resolved against the party concerned by restriction to his effective filing date or to the latest date of a period alleged as may be appropriate. Prior to final hearing a party will not be notified of any defect in his statement except that a junior party, subject to restriction resulting from such a defect and by virtue of that restriction being subject to judgment under § 1.225, will be notified of that defect and also notified that judgment on the record will be entered against him at the expiration of a time set, not less than 30 days, unless cause be shown why judgment should not be entered. Each of the parties by whom or on whose behalf a preliminary statement is made will be strictly held in his proofs to the dates set forth therein. This includes joint applicants or patentees; a new preliminary statement will not be received in the event the application is amended or the patent is corrected to remove the names of those not inventors, nor will a preliminary statement alleging different dates be received if an application is amended or a patent is corrected to include a joint inventor, except by motion under § 1.222.

(b) If a party proves any date earlier than alleged in his preliminary statement, such proof will be held to establish the date so alleged and none earlier.

(c) If a party to an interference fails to file a statement, testimony will not be received subsequently from him to prove that he made the invention at a date prior to his effective filing date. If a party alleges in his statement a date of first drawing or first written description but does not attach a copy of such drawing or written description as required by § 1.216(b), he will be restricted to his effective filing date as to that allegation unless such copy is admitted by motion under § 1.222. The content of a drawing or written description attached to the statement normally will not be considered by the Office.

(d) The preliminary statement can in no case be used as evidence in behalf of the party making it.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 12630, Aug. 2, 1969; 43 FR 28478, June 30, 1978]

§ 1.224 Reliance on prior application.

A party will not be permitted to rely on any prior application to obtain the benefit of its filing date unless the prior application is specified in the notice of interference (see § 1.226) or its benefit is sought by a motion filed in accordance with § 1.231. In the latter case, complete copies of the contents of the application file the benefit of which is sought, except affidavits or declarations under §§ 1.131, 1.202, and 1.204, must be served on all opposing parties with the motion, and in the case of a foreign application the necessary papers to prove a date of priority under 35 U.S.C. 119 including a translation where required (§ 1.55), must be filed and copies served on all opposing parties with the motion except for such papers as were of record in the involved application when the interference was declared. In either case proof of service required by § 1.247 must include reference to the prior application as well as the motion or, in the case of the stated exception, note that the papers in question were of record when the interference was declared.

[34 FR 12630, Aug. 2, 1969, as amended at 34 FR 18858, Nov. 26, 1969]

§ 1.225 Failure of junior party to file statements or to overcome filing date of senior party.

(a) If a junior party to an interference fails to file a preliminary statement, or if his statement fails to overcome the effective filing date of another party, judgment on the record will be entered against that junior party unless:

(1) Under the provisions of § 1.258(a), he would be entitled to raise before the Board of Patent Interferences a matter which is ancillary to priority and which, if decided in his favor, would remove the basis for judgment on the record against him, and

(2) Within a time set by the patent interference examiner, not less than 30 days, he requests that final hearing be set to review such matter. If the matter was raised in a motion which was dismissed for one of the reasons specified in § 1.258(a)(1)(iii), the request for final hearing must be accompanied by a motion to take testimony under paragraph (b) of this section.

(b) Such a junior party will not be permitted to take testimony except on granting of a motion accompanied by showing of good cause, which should normally include names of proposed witnesses and affidavits or declarations by them giving their expected testimony.

(c) If, as a result of a decision on motion, the original senior party is deprived of the benefit of an earlier filed application and is thereby made a junior party and if in addition he relies solely on said earlier filed application in his preliminary statement, he stands in the same position as a junior party whose statement fails to overcome the effective filing date of the senior party as in the first sentence of § 1.225(a).

[43 FR 28478, June 30, 1978, as amended at 46 FR 52363, Oct. 27, 1981]

§ 1.226 Access to applications.

After the mailing of the notices of interference each party will be permitted to see or obtain copies of each other's applications which are set out in the notices except for copies of affidavits or declarations filed under §§ 1.131, 1.202, and 1.204 which shall be and remain sealed until preliminary statements are opened under § 1.227, except as provided in § 1.228 regarding affidavits or declarations under § 1.204(c).

[30 FR 6646, May 14, 1965, as amended at 34 FR 18858, Nov. 26, 1969]

§ 1.227 Access to preliminary statements.

(a) The preliminary statements shall be open to the inspection of the senior party, and of any junior party who himself filed a statement, after the date set for the serving of preliminary statements (§ 1.207(b)(2)), but shall not be open to inspection prior to that time.

(b) A junior party who fails to file a preliminary statement shall not have access to the preliminary statement of any other party.

(c) If the interference be terminated before the preliminary statements have been opened to the inspection of the parties, the preliminary statements will remain sealed.

(d) After termination of an interference any unopened statements will be removed from the interference file and preserved by the Office, and in no case will such statements be open to the inspection of anyone (including opposing parties) without authority from the Commissioner.

[30 FR 6646, May 14, 1965]

§ 1.228 Summary judgment.

When an interference is declared on the basis of a showing under § 1.204(c), such showing will be examined by an Examiner of Interferences. If the Examiner considers that the facts set out in the showing provide sufficient basis for the interference to proceed, the interference will proceed in the normal manner as provided by the regulations in this part; otherwise an order shall be entered concurrently with the notice of interference pointing out wherein the showing is insufficient and notifying the applicant making such showing that summary judgment will be rendered against him because of such insufficiency at the expiration of a period specified in the notice, not less than 30 days, unless cause be shown why such action should not be taken. In the absence of a showing of good and sufficient cause, judgment shall be so rendered. Any response made during the specified period will be considered by a Board of Patent Interferences without an oral hearing unless such hearing is requested by the applicant, but additional affidavits, declarations or exhibits will not be considered unless accompanied by a showing in excuse of their omission from the original showing. If the applicant files a response to the order to show cause, the patentee will be furnished with one copy of the showing under § 1.204(c) and will be allowed not less than 30 days from its mailing date within which to present his views with respect thereto. He shall also be entitled to be represented at any oral hearing on the matter. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to not more than 30 minutes for each party. The Board will determine, on the basis of the original showing and the response made, whether the interference should be allowed to proceed or summary judgment should be entered against the junior applicant.

[41 FR 27832, July 7, 1976]

INTERFERENCES: MOTION PERIOD, DISSOLUTION, REFORMATION

AUTHORITY: Secs. 1.231 to 1.238 also issued under 35 U.S.C. 135.

§ 1.231 Motions before the primary examiner.

(a) Within the period set in the notice of interference for filing motions any party to an interference may file a motion seeking:

(1) To dissolve as to one or more counts, except that such motion based on facts sought to be established by affidavits, declarations or evidence outside of official records and printed publications will not normally be considered. A motion to dissolve an interference in which a patentee is a party on the ground that the claims corresponding to the counts are unpatentable to the patentee over patents or printed publications will be considered through reexamination if it complies with the requirements of § 1.510(b) and is accompanied by the fee for requesting reexamination set in § 1.21(x). Otherwise, a motion to dissolve an interference in which a patentee is a party will not be considered if it would necessarily result in the conclusion that the claims of the patent which correspond to the counts are unpatentable to the patentee on a ground which is not ancillary to priority. Where a motion to dissolve is based on prior art, service on opposing parties must include copies of such prior art. A motion to dissolve on the ground that there is no interference in fact will not be considered unless the interference involves a design or plant patent or application or unless it relates to a count which differs from the corresponding claim of an involved patent or of one or more of the involved applications as provided in §§ 1.203(a) and 1.205(a).

(2) To amend the issue by addition or substitution of new counts. Each such motion must contain an explanation as to why a count proposed to be added is necessary or why a count proposed to be substituted is preferable to the original count, must demonstrate patentability of the count to all parties and must apply the proposed count to all involved applications except an application in which the proposed count originated.

(3) To substitute any other application owned by him as to the existing issue, or to declare an additional interference to include any other application owned by him as to any subject matter other than the existing issue but disclosed in his application or patent involved in the interference and in an opposing party's application or patent in the interference which should be made the basis of interference with such other party. Complete copies of the contents of such other application, except affidavits or declarations under §§ 1.131, 1.202, and 1.204, must be served on all other par-

ties and the motion must be accompanied by proof of such service.

(4) To be accorded the benefit of an earlier application or to attack the benefit of an earlier application which has been accorded to an opposing party in the notice of declaration. See § 1.224.

(5) To amend an involved application by adding or removing the names of one or more inventors as provided in § 1.45. (See par. (d) of this section.)

(b) Each motion must contain a full statement of the grounds therefor and reasoning in support thereof. Any opposition to a motion must be filed within 20 days of the expiration of the time set for filing motions and the moving party may, if he desires, file a reply to such opposition within 15 days of the date the opposition was filed. If a party files a timely motion to dissolve, any other party may file a motion to amend within 20 days of the expiration of the time set for filing motions. Service on opposing parties of an opposition to a motion to amend which is based on prior art must include copies of such prior art. In the case of action by the primary examiner under § 1.237, such motions may be made within 20 days from the date of the primary examiner's decision on motion wherein such action was incorporated or the date of the communication giving notice to the parties of the proposed dissolution of the interference.

(c) A motion to amend under paragraph (a)(2) of this section or to substitute another application or declare an additional interference under paragraph (a)(3) of this section must be accompanied by an amendment adding claims corresponding to the proposed counts to the application concerned if such claims are not already in that application. The motion must also request the benefit of a prior application as provided for under paragraph (a)(4) of this section if the party concerned expects to be accorded such benefit.

(d) All proper motions as specified in paragraphs (a) and (b) of this section, or of a similar character, will be transmitted to and considered by the primary examiner without oral argument, except that consideration of a motion to dissolve on a ground other than no interference in fact will be deferred to final hearing before a Board of Patent Interferences where the motion raises a matter which would be reviewable at final hearing under § 1.258(a) and such matter is raised against a patentee or has been ruled upon by the Board of Appeals or by a court in ex parte proceedings. Also consideration of a motion to add or remove the names of one or more inventors may be deferred to final hearing if such motion is filed after the times for taking testimony have been set. Requests for reconsideration will not be entertained.

(e) In the determination of a motion to dissolve an interference between an application and a patent, the prior art of record in the patent file may be referred to for the purpose of construing the issue.

(f) Upon the granting of a motion to amend and the adoption of the claims by the other parties within a time specified, or upon the granting of a motion to substitute another application, and after the expiration of the time for filing any new preliminary statements, a patent interference examiner shall redeclare the interference or shall declare such other interferences as may be necessary to include said claims. A preliminary statement as to the added claims need not be filed if a party states that he intends to rely on the original statement and such a declaration as to added claims need not be signed or sworn to by the inventor in person. A second time for filing motions will not be set and subsequent motions with respect to matters which have been once considered by the primary examiner will not be considered.

[30 FR 6647, May 14, 1965, as amended at 34 FR 12630, Aug. 2, 1969; 34 FR 18858, Nov. 26, 1969; 38 FR 10005, Apr. 23, 1973; 40 FR 11873, Mar. 14, 1975; 46 FR 29184, May 29, 1981; 46 FR 52363, Oct. 27, 1981]

§ 1.237 Dissolution at the request of examiner.

If, during the pendency of an interference a reference or other reason be found which, in the opinion of the primary examiner, renders all or part of the counts unpatentable, the attention of the Board of Patent Interferences shall be called thereto. The interference may be suspended and referred to the primary examiner for consideration of the matter, in which case the parties will be notified of the reason to be considered. Arguments of the parties regarding the matter will be considered if filed within 20 days of the notification. The interference will be continued or dissolved in accordance with the determination by the primary examiner. If such reference or reason be found while the interference is before the primary examiner for determination of a motion, decision thereon may be incorporated in the decision on the motion, but the parties shall be entitled to reconsideration if they have not submitted arguments on the matter.

[30 FR 6647, May 14, 1965]

§ 1.238 Addition of new party by examiner.

If during the pendency of an interference, another case appears, claiming substantially the subject matter in issue, the primary examiner should notify the Board of Patent Interferences and request addition of such case to the interference. Such addition will be done as a matter of course by a patent interference examiner, if no testimony has been taken. If, however, any testimony may have been taken, the patent interference examiner shall prepare and mail a notice for the proposed new party, disclosing the issue in interference and the names and addresses of the interferants and of their attorneys or agents, and notices for the interferants disclosing the name and address of the said party and his attorney or agent, to each of the parties, setting a time for stating any objections and at his discretion a time of hearing on the question of the admission of the new party. If the patent interference examiner be of the opinion that the new party should be added, he shall prescribe the conditions imposed upon the proceedings, including a suspension if appropriate.

[34 FR 12631, Aug. 2, 1969]

INTERFERENCES: MISCELLANEOUS PROVISIONS

AUTHORITY: Secs. 1.242 to 1.248 also issued under 35 U.S.C. 135.

§ 1.242 Prosecution by assignee.

When on motion duly made and upon satisfactory proof, it shall be shown that, by reason of the inability or refusal of the inventor to take suitable action in an interference, or from other cause, the ends of justice require that an assignee of an undivided interest in the invention be permitted to prosecute the same, it may be so ordered.

§ 1.243 Motions before the Board of Patent Interferences.

(a) Motions relating to matters other than those specified in § 1.231 will be determined by a patent interference examiner or the Board of Patent Interferences, as may be deemed appropriate. Such motions shall be made in writing and shall contain a full statement of the action sought and the grounds therefor, and satisfactory proof of any facts required must accompany the motion. Oral hearings will not be held except on order of a patent interference examiner or Board of Patent Interferences. Briefs or memoranda in support of such motions shall accompany the motion. Any opposition to the motion, together with any brief or memorandum in support thereof, shall be filed within 20 days from the date of service of the motion unless some other date is set by the patent interference examiner.

(b) Typewritten briefs may be used in connection with all motions. By stipulation of the parties subject to approval or by order of the tribunal before whom the motion is pending, briefs may be received if filed otherwise than as prescribed.

(c) In oral hearings on motions, the moving parties shall have the right to make the opening and closing arguments. Unless otherwise ordered before the hearing begins, oral arguments will be limited to 30 minutes for each party.

(d) Any request for reconsideration or modification of a decision or other action by the Board of Patent Interferences or patent interference examiner, must be filed within 20 days after the date of the decision, or other action and any reply thereto must be filed within 20 days from the date of service of the request. With regard to requests for reconsideration of a decision after final hearing, see § 1.256(b).

[41 FR 27832, July 7, 1976]

§ 1.244 Petition to the Commissioner from decisions on motions.

There is no appeal from decisions rendered on motions, but the Commissioner may consider on petition any matter involving abuse of discretion or the exercise of his supervisory authority, or such other matters as he may deem proper to consider. Any such petition must comply with § 1.181 and, if not filed within 20 days from the decision complained of, may be dismissed as untimely. Any opposition thereto must be filed within 20 days from the date of service of the petition.

[41 FR 27832, July 7, 1976]

§ 1.245 Extension of time.

Extensions of time in any case not otherwise provided for may be had by stipulation of the parties, subject to approval, or on motion duly brought, sufficient cause being shown for such extension.

[43 FR 28478, June 30, 1978]

§ 1.246 Late papers.

A motion or other paper belatedly filed will not normally be considered except upon a showing, under oath or in the form of a declaration (§ 1.68), of sufficient cause as to why such motion or paper was not timely presented.

[43 FR 28478, June 30, 1978]

§ 1.247 Service of papers.

(a) Every paper filed in the Patent and Trademark Office in interference proceedings must be served upon the other parties in the manner provided in § 1.248, except the following:

(1) Preliminary statements at the time of filing but see § 1.215 (b) and (c).

(2) Documentary exhibits introduced at the taking of a deposition.

(3) Certified transcripts of testimony under § 1.276 (but copies of the record must be served (§ 1.253(a)).

(4) Statutory disclaimers under 35 U.S.C. 253.

(b) The specification in certain sections that a designated paper must be served does not imply that other papers, not excepted above need not be served. However, the requirement for service of designated papers may be waived under particular circumstances and service may be required of other designated papers which need not ordinarily be served. Proof of service must be made before the paper will be considered in the interference by the Office. A statement of the attorney, attached to or appearing in the original paper when filed, clearly stating the time and manner in which service was made will be accepted as prima facie proof of service.

[43 FR 28478, June 30, 1978]

§ 1.248 Service of papers; manner of service; proof of service.

(a) Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in any of the following ways:

(1) By delivering a copy of the paper to the person served;

(2) By leaving a copy at the usual place of business of the person served with someone in his employment;

(3) When the person served has no usual place of business, by leaving a copy at the person's residence, with some person of suitable age and discretion who resides there;

(4) Transmission by first class mail. When service is by mail the date of mailing will be regarded as the date of service;

(5) Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining or serving the paper is practicable, service may be by notice published in the *Official Gazette.*

(b) Papers filed in the Patent and Trademark Office which are required to be served shall contain proof of service. Proof of service may appear on or be affixed to papers filed. Proof of service shall include the date and manner of service. In the case of personal service, proof of service shall also include the name of any person served, certified by the person who made service. Proof of service may be made by: (1) An acknowledgement of service by or on behalf of the person served or (2) a statement signed by the attorney or agent containing the information required by this section.

[46 FR 29184, May 29, 1981]

INTERFERENCES: TRIAL

AUTHORITY: Secs. 1.251 to 1.259 also issued under 35 U.S.C. 135.

§ 1.251 Assignment of times for discovery and taking testimony.

(a) Subject to the exception provided in paragraph (c) of this section, a period for preparation for testimony will be set in which all parties should complete discovery and other preparatory activities, except for service by the senior party required by § 1.287(a)(1) which is governed by § 1.287(a)(2)(iii).

(b) Subject to the exception provided in paragraph (c) of this section, times will be assigned in which the junior party shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior party may take rebutting testimony, but he shall take no other testimony. If there be more than two parties to the interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties and to rebut their evidence, and also to meet the evidence of junior parties. If a senior party fails to file a preliminary statement, or expressly elects to rely solely on his effective filing date, he will be assigned only a time for taking rebuttal testimony, and no junior party will be assigned a time for taking rebuttal testimony unless another junior party senior to him is assigned a time for taking testimony in chief. But, subject to the conditions imposed upon junior parties by § 1.225, such senior party may be assigned a period for taking testimony concerning a matter raised by a motion under § 1.231.

(c) Times for preparation of testimony, for compliance with § 1.287(a) and for taking of testimony will ordinarily be assigned in notices sent to the parties after motions under § 1.231 have been disposed of or, if no such motions have been filed, after the close of the motion period (§ 1.231). Such times will not normally be assigned for a junior party who fails to file a preliminary statement or whose preliminary statement fails to overcome the effective filing date of the senior party. (See § 1.225).

(d) Testimony shall be taken during the times assigned in accordance with §§ 1.271 to 1.286.

(e) The date for final hearing will ordinarily be set in separate notices.

[36 FR 8733, May 12, 1971, as amended at 38 FR 10005, Apr. 23, 1973; 40 FR 11873, Mar. 14, 1975]

§ 1.252 Failure of junior party to take testimony.

Upon the filing of a motion for judgment by any senior party to an interference stating that the time for taking testimony on behalf of any junior party has expired and that no testimony has been taken and no other evidence offered by said junior party, an order shall be entered that the junior party show cause within a time set therein, not less than 10 days, why judgment should not be rendered against him, and in the absence of a showing of good and sufficient cause, judgment shall be so rendered. In the absence of such a motion, if any junior party fails to file an evidentiary record by the date set as provided in § 1.253(d), a patent interference examiner shall enter the order to show cause.

[34 FR 12631, Aug. 2, 1969]

§ 1.253 Copies of the testimony.

(a) In addition to the certified transcript of the testimony (§§ 1.275 to 1.278) or executed copies of affidavits or stipulated testimony or facts (§ 1.272), and the exhibits, three true copies of the testimony of each party must be filed for the use of the Office (a total of four copies), and one true copy must be served upon each of the opposing parties. Only one set of exhibits need be filed in the Office.

(b) These copies of the testimony may be submitted either in printed or in typewritten form.

(c) These copies, whether printed or typewritten, must include the testimony presented by the party filing the same, a copy of the counts of the interference, an index of the names of the witnesses, giving the pages where their examination and cross-examination begin, and an index of the exhibits, briefly describing their nature and giving the pages at which they are introduced and offered in evidence. The pages must be serially numbered throughout the entire record of testimony and the names of the witnesses must appear at the top of the pages over their testimony.

(d) The copies of the testimony for all parties must be filed and served on the opposing parties by the date specified in the order setting times for taking testimony or such extensions as may be granted.

(e) When the copies of the testimony are submitted in printed form, they may be produced by standard typographic printing or by any process capable of producing a clear black permanent image. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. Margins must be justified. Footnotes may not be printed in type smaller than 9 point. The page size shall be either 7⅝ by 10¼ inches (19.4 by 26 cm.) with type matter 4⅙ by 7⅙ inches (10.6 by 18.2 cm.), or 8½ by 11 inches (21.6 by 27.9 cm.) with type matter 6½ by 9½ inches (16.5 by 24.1 cm.). The testimony shall be bound to lie flat when open. Twenty-five additional copies for the United States Court of Customs and Patent Appeals, should appeal be taken, may also be filed; if no appeal be taken, the twenty-five copies will be returned to the party filing the testimony.

(f) When the copies of the testimony are submitted in typewritten form, they must be clearly legible on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.6 by 27.9 cm.) in size (letter size) and one of the three copies must be a ribbon copy, but need not be executed by the certifying officer. (The certified transcript may be a properly executed carbon copy. See § 1.277.) The typing shall be on one side of the paper, in not smaller than pica-type; and double-spaced with a margin of 1½ inches (3.8 cm.) on the left-hand side of the page. The sheets shall be bound at their left edges, in such manner to lie flat when opened, in a volume or volumes of convenient size (approximately 100 pages per volume is suggested) provided with covers. Documentary exhibits should not be included in bound volumes of testimony. Multigraphed or otherwise reproduced copies conforming to the standards specified will be accepted.

(g) The testimony of any party failing to supply copies thereof as specified may be refused consideration.

[40 FR 11873, Mar. 14, 1975, as amended at 46 FR 52363, Oct. 27, 1981]

§ 1.254 Briefs at final hearing.

Briefs at final hearing before the Board of Patent Interferences shall be submitted in printed form, except that when not in excess of 50 legal-size double-spaced typewritten pages, or the equivalent thereof, and in any other case where satisfactory reason therefor is shown they may be submitted in typewritten form. If submitted in printed form, they shall be the same in size and the same as to page and print as is specified for printed copies of testimony. Typewritten briefs shall conform to the requirements for typewritten copies of testimony, except that legal-size paper may be used and the binding and covers specified are not required. Every brief of more than 15 pages shall contain a subject index with page references, supplemented by a list of all authorities referred to, together with references to pages thereof. Three copies of each brief must be filed. The times for filing briefs will be set at an appropriate stage in the proceeding prior to final hearing. The brief for the junior party shall present a full, fair statement of the questions involved, including his position with respect to priority evidence on behalf of other parties, and a clear statement of the points of law or fact upon which he relies. The main brief for each party shall contain a copy of the counts in interference. The board may refuse to accept any brief which has been printed, typewritten, or bound otherwise than in substantial conformity with this section.

[41 FR 27832, July 7, 1976, as amended at 46 FR 52363, Oct. 27, 1981]

§ 1.255 Request for findings of fact and conclusions of law.

Either party may, in his brief, submit concise proposed findings of fact, supported by specific references to and analysis of the record, and conclusions of law, supported by citation of authorities. The opposing party may, in his brief in reply thereto, accept any such proposed findings, or reject any proposed findings giving the reasons therefor, and may likewise submit proposed findings. The Board of Patent Interferences may, in its discretion, adopt the proposed findings in whole or in part.

§ 1.256 Final hearing.

(a) Final hearings will be held by the Board of Patent Interferences on the day appointed at the designated time. If either party appears at the proper time, he will be heard. After the day of hearing, the case will not be taken up for oral argument except by consent of all parties. If the Board of Patent Interferences be prevented from hearing the case at the time specified, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to not more than one hour for each party. A junior party may reserve a portion of his time for rebuttal purposes, but a full, fair opening of his case must be made, including his position with respect to the case presented on behalf of other parties. After a contested case has been argued nothing further relating thereto will be heard unless upon request of the Board of Patent Interferences.

(b) Any request for rehearing or reconsideration, or modification of the decision after final hearing, must be filed within 30 days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Patent Interferences so states. Any reply thereto must be filed within 15 days from the filing of the request. The times specified herein may be extended by the Board of Patent Interferences upon a showing of sufficient cause. (See § 1.304.)

[41 FR 27833, July 7, 1976]

§ 1.257 Burden of proof.

(a) The parties to an interference will be presumed to have made their inventions in the chronological order of the filing dates of their applications for patents involved in the interference or the effective filing dates which such applications have been accorded; and the burden of proof will rest upon the party who shall seek to establish a different state of facts.

(b) The termination of the interference by dissolution under § 1.231 or § 1.237, without an award of priority, or by an award of priority based solely upon ancillary matters, shall not disturb this presumption, and a party under these circumstances enjoying the status of a senior party with respect to any subject matter of his application shall not be deprived of any claim to such subject matter solely on the ground that such claim was not added to the interference by amendment under § 1.231.

[24 FR 10332, Dec. 22, 1959, as amended at 31 FR 7285, May 19, 1966]

§ 1.258 Matters considered in determining priority.

(a) In determining priority of invention, the Board of Patent Interferences will consider only priority of invention on the evidence submitted, and matters ancillary thereto. A party shall be entitled to raise a matter which is ancillary to priority only if:

(1) The matter was raised by the party in a motion under § 1.231(a), and:

(i) The motion was transmitted to and decided by the primary examiner; or

(ii) Consideration of the motion was deferred to final hearing; or

(iii) The motion was dismissed as being based on facts sought to be established by affidavits, declarations or evidence outside of official records and printed publications, or as being based on a ground which would require the taking of testimony; or

(2) The matter was raised by the party in opposition to a motion under § 1.231(a) (2), (3), (4) or (5) which was granted over his opposition; or

(3) The party shows good reason why the matter was not raised as specified in paragraphs (a)(1) or (a)(2) of this section.

(b) To prevent manifest injustice the Board of Patent Interferences may in its discretion consider a matter which is ancillary to priority even though it would not otherwise be entitled to consideration under paragraph (a) of this section.

(c) At final hearing between an application and a patent the prior art of record in the patent file may be referred to for the purpose of construing the issue.

[46 FR 52363, Oct. 27, 1981]

§ 1.259 Recommendation by Board of Patent Interferences.

The Board of Patent Interferences may, either before or concurrently with their decision on the question of priority, but independently of such decision, direct the attention of the Commissioner to any matter not relating to priority which may have come to their notice, and which in their opinion establishes the fact that no interference exists, or that there has been irregularity in declaring the same, or which amounts to a bar to the grant of a patent to either of the parties for the claim or claims in interference. The Commissioner may suspend the interference and remand the case to the primary examiner for his consideration of the matters to which attention has been directed if such matters have not been considered before by the examiner, or take other appropriate action. If the case is not so remanded, the primary examiner will, after judgment on priority, consider such matters, unless the same shall have been previously disposed of by the Commissioner.

INTERFERENCES: TERMINATION

AUTHORITY: Secs. 1.261 to 1.267 also issued under 35 U.S.C. 135.

§ 1.261 Termination of interference.

An interference will be terminated by judgment after final hearing (§§ 1.251 to 1.259), or by judgment on the record as provided by § 1.225 or § 1.252, or by summary judgment because of an insufficient showing under § 1.204(c) as provided by § 1.228, or by dissolution as provided by § 1.231 or § 1.237, or as otherwise provided.

[30 FR 6648, May 14, 1965]

§ 1.262 Disclaimer, concession, abandonment.

(a) An applicant or a patentee involved in an interference may, at any time, file a written disclaimer or concession of priority, or abandonment of the invention, signed by the inventor in person with the written consent of the assignee when there has been an assignment. Upon the filing of such an instrument by any party, judgment shall be rendered against him.

(b) An applicant, except an applicant for reissue having a claim or claims from his patent in the interference, may at any time prior to the taking of testimony, and at any time thereafter with the consent of all of the other parties involved, avoid the continuance of the interference as to all counts by filing a written abandonment of the contest or of the application, signed by the inventor in person with the written consent of the assignee when there has been an assignment. Upon the filing of such abandonment of the contest or of the application, the interference shall be dissolved as to that party, but such dissolution shall in subsequent proceedings have the same effect with respect to the party filing the same as an adverse award of priority.

(c) Upon a showing of sufficient cause, the disclaimer, or abandonment of the invention, or abandonment of the contest or of the application above referred to, may be executed and filed by the assignee of the entire interest. A concession of priority may not be made by an assignee.

(d) Such disclaimer, concession of priority, abandonment of the invention, or abandonment of the contest shall operate without further action as a direction to cancel the claims involved from the application of the party making the same on termination of the interference on the basis thereof.

§ 1.263 Statutory disclaimer by patentee.

The disclaimer referred to in § 1.262, when made by a patentee in interference is not a disclaimer under 35 U. S. C. 253. If a disclaimer under the statute (see § 1.321) cancelling claims involved in the interference from the patent, is made by the patentee, including all assignees as shown by the records of the Patent and Trademark Office, the interference will be dissolved pro forma as to such claims.

§ 1.264 Reissue filed by patentee.

If a patentee in interference files an application for reissue during the interference, omitting the claims involved (for the purpose of avoiding the interference), the application will be examined and such examination will include the question of patentability over the issue of the interference and over the application of the other party. The interference will not be terminated unless a reissue is granted excluding claims to the conflicting subject matter, whereupon the interference will be dissolved. If a reissue application is filed for other purposes, it may be held subject to the outcome of the interference. An application for reissue will not be included in the interference on the basis of new claims presented by the reissue unless a motion to that effect is brought during the motion period or any delay adequately explained.

§ 1.265 Status of claims of defeated applicant after interference.

Whenever an award of priority has been rendered in an interference proceeding and the limit of appeal from such decision has expired, the claim or claims constituting the issue of the interference in the application of the defeated or unsuccessful applicant or applicants stand finally disposed of without further action by the examiner and are not open to further ex parte prosecution.

§ 1.266 Action after interference.

(a) After the termination of the interference, the primary examiner will promptly take such action in each of the applications involved as may be necessary. Amendments presented during the interference shall not be entered except as otherwise provided; amendments required to accompany motions to amend shall be entered only to the extent the motion was granted (matter not entered may be subsequently presented by the applicant, subject to the sections relating to amendments, provided the prosecution of the application is not otherwise closed). The examiner will act on any matter requiring action and call for response to any examiner's action unresponded to.

(b) After judgment of priority, the application of any party may be held subject to further examination, including interference with other applications.

§ 1.267 Second interference.

A second interference between the same parties will not be declared upon another application for patent for the same invention filed by either party.

TESTIMONY IN INTERFERENCES AND OTHER CONTESTED CASES

AUTHORITY: Secs. 1.271 to 1.286 also issued under 35 U.S.C. 23, 135.

§ 1.271 Evidence must comply with rules.

Evidence touching the matter at issue which shall not have been taken and filed in compliance with this part will not be considered in determining the interference or other proceeding.

§ 1.272 Manner of taking testimony of witnesses.

(a) The testimony of witnesses shall be taken by depositions on oral examination in accordance with the regulations in this part.

(b) If the parties so stipulate in writing, deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By agreement of the parties, provided the Commissioner consent, testimony may be taken before an officer or officers of the Patent and Trademark Office under such terms and conditions as the Commissioner may prescribe.

(c) By agreement of the parties, the testimony of any witness or witnesses of any party may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated. When evidence is submitted in one of these forms, four copies of such affidavit or stipulated testimony (§ 1.253 (a), (c), (f)) are required.

[24 FR 10332, Dec. 22, 1959, as amended at 38 FR 10005, Apr. 23, 1973]

§ 1.273 Notice of examination of witnesses.

(a) Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in § 1.248, of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a witness is not known a general description sufficient to identify him or the particular class or group to which he belongs, together with a satisfactory explanation, may be given instead. The opposing party shall have full opportunity, either in person or by attorney, to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice. Neither party shall take testimony in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other cannot be had.

(b) The notice for taking testimony must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, upon the adverse party. Reasonable time must be given therein for such adverse party to reach the place of examination. Such notice shall, with a statement signed by the attorney as to the fact, time, and mode of service thereof, be attached to the deposition or depositions, whether the opposing party shall have cross-examined or not.

§ 1.274 Persons before whom depositions may be taken.

(a) Within the United States, or within a territory or insular possession of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) No such officer who is a relative or employee of either of the parties, or of their attorneys or agents, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent or otherwise, shall be competent to take depositions, unless with the written consent of all the parties.

§ 1.275 Examination of witnesses.

(a) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of § 1.274(b)), in the presence of the officer except when his presence is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise.

(c) In the absence of all opposing parties and their attorneys or agents, testimony may be taken in longhand, typewriting, or stenographically.

(d) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(e) When the testimony has been transcribed, the deposition shall be carefully read over by the witness, or by the officer to him, and shall then be signed by the witness in the presence of the officer unless the reading and the signature be waived on the record by agreement of all parties.

§ 1.276 Certification and filing by officer.

The officer shall annex to the deposition his certificate showing: (a) Due administration of the oath by the officer to the witness before the commencement of his testimony; (b) the name of the person by whom the testimony was taken down, and whether, if not taken down by the officer, it was taken down in his presence; (c) the presence or absence of the adverse party; (d) the place, day, and hour of commencing and taking the deposition; (e) that the deposition was read by or to the witness before he signed the same, and that he signed the same in the presence of the officer; and (f) the fact that the officer was not disqualified as specified in § 1.274. If any of the foregoing requirements are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he have such seal. Unless waived on the record by agreement, he shall then, without delay, securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents and Trademarks. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted in a separate package, marked and addressed as provided in this section.

§ 1.277 Form of deposition.

(a) The testimony must be written on letter size paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet. The pages must be serially numbered throughout the entire record for each party (§ 1.253(c)) and the name of the witness must be plainly and conspicuously written at the top of each page. The questions propounded to each witness must be consecutively numbered, unless paper with numbered lines is used, and each question must be followed by its answer.

(b) In order to have a ribbon copy of the testimony available as required by § 1.253(f), a carbon copy of the deposition may be executed by the witnesses and the officer and filed as required by § 1.276.

(c) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

[24 FR 10332, Dec. 22, 1959, as amended at 38 FR 10005, Apr. 23, 1973; 40 FR 11874, Mar. 14, 1975]

§ 1.278 Depositions must be filed.

All depositions which are taken must be duly filed in the Patent and Trademark Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

§ 1.279 Inspection of testimony.

After testimony is filed in the Office, it may be inspected by any party to the case, but it cannot be withdrawn for the purpose of printing. It may be printed by someone specially designated by the Office for that purpose, under proper restrictions.

§ 1.281 Additional time for taking testimony.

If either party has proceeded with the taking of testimony on his behalf but is unable to complete his case because of inability to procure the testimony of a witness or witnesses within the time limited and said time has expired, and he desires additional time for such purpose, he must file a motion, accompanied by a statement under oath or in the form of a declaration setting forth specifically the cause of such inability, the name or names of the witness or witnesses, the facts expected to be proved by such witness or witnesses, the steps which have been taken to procure such testimony, and the dates on which efforts have been made to procure it. (See § 1.245 for extensions of time in other situations.)

[38 FR 10005, Apr. 23, 1973]

§ 1.282 Official records and printed publications.

(a) Official records and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be introduced in evidence by filing in the Patent and Trademark Office a notice to that effect, before the closing of the time for taking the testimony of the party (before the time for taking the testimony in chief if such matters are not in rebuttal), specifying the record or the printed publication, the page or pages thereof to be used, indicating generally its relevancy, and accompanied by the record or authenticated copy, or the printed publication or a copy. The notice and copies of the record or publication must be served on each of the other parties.

(b) In the case of prior applications, the filing date of which is claimed, compliance with the requirements of §§ 1.224 and 1.231 is sufficient notice under this section.

[24 FR 10332, Dec. 22, 1959, as amended at 30 FR 6648, May 14, 1965]

§ 1.283 Testimony taken in another interference or action.

Upon motion, supported by a showing demonstrating its relevance and materiality to the issue, duly made and granted, testimony taken in another interference proceeding or action, between the same parties or those in interest, may be used in an interference proceeding, subject, however, to the right of any contesting party to recall or demand the recall of witnesses whose testimony has been taken and who are physically and mentally able to testify, and to take other testimony in rebuttal of the testimony.

[34 FR 12632, Aug. 2, 1969]

§ 1.284 Testimony taken in foreign countries.

Upon motion duly made and granted, testimony may be taken in foreign countries, upon complying with the following requirements:

(a) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside and it must be accompanied by a statement under oath that the motion is made in good faith, and not for the purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

(b) It must be demonstrated that the testimony desired is material and competent, and that it cannot be taken in this country at all, or cannot be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

(c) Upon the granting of such motion a time will be set within which the moving party shall file in duplicate the interrogatories to be propounded to each witness, and serve a copy of the same upon each adverse party, who may, within a designated time, file in duplicate cross-interrogatories. Objections to any of the interrogatories or cross-interrogatories may be filed at any time before the depositions are taken and such objections will be considered and determined upon the hearing of the case.

(d) As soon as the interrogatories and cross-interrogatories are decided to be in proper form, the Commissioner will cause them to be forwarded to the proper officer, with the request that, upon payment of, or satisfactory security for, his official fees, he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers to writing, and transmit the same, under his official seal and signature, to the Commissioner of Patents and Trademarks with the certificate prescribed in § 1.276.

(e) By stipulation of the parties the requirements of paragraph (c) of this section as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties, their attorneys or their agents.

(f) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state in which it shall be taken, it will not stand on the same footing in the Patent and Trademark Office as testimony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 12632, Aug. 2, 1969]

§ 1.285 Effect of errors and irregularities in depositions.

Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof.

(a) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless objection is promptly made and served in writing upon the party giving the notice.

(b) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(d) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 1.286 Objections to admissibility.

Subject to the provisions of § 1.285, objection may be made to receiving in evidence any deposition or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence according to the established rules of evidence, which will be applied strictly by the Office.

§ 1.287 Discovery.

(a)(1) Each party who expects to take testimony must serve on each opposing party who requests service the following:

(i) A copy of each document in his possession, custody, or control and upon which he intends to rely,

(ii) A list of and a proffer of reasonable access to things in his possession, custody, or control and upon which he intends to rely, and

(iii) A list giving the names and addresses of all persons whom he intends to call as witnesses and indicating the relationship of each person to the invention in issue.

(2) Dates for compliance with paragraph (a)(1) of this section will be set in accordance with the following:

(i) The date by which all parties may request service shall be not less than 10 days from the date of the order setting testimony times;

(ii) The date for service by all junior parties shall be not less than 30 days from the date of the order setting such times;

(iii) The date for service by the senior party shall be not less than 10 days from the date set for the close of testimony in chief of all junior parties.

(3) Where more than two parties are involved and one of the junior parties is not entitled to take testimony as to a more senior party, the requirements of paragraphs (a) (1) and (2) of this section shall not be applicable as between such parties.

(b) The provisions of paragraph (a) of this section are without prejudice to the right of a party, where appropriate, to obtain production of documents or things during cross-examination of an opponent's witness or during his own period for rebuttal testimony.

(c) Upon motion (§ 1.246) brought by a party during the period for preparation for testimony, or thereafter as authorized under § 1.246, and upon a showing that the interest of justice so requires, the Board of Patent Interferences may order additional discovery as to matters under the control of a party within the scope of the discovery rules of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. An order by the Board granting or denying a motion under this paragraph shall not be subject to review prior to a decision awarding priority.

(d)(1) A party will not be permitted to rely on any document or thing in his possession, custody, or control, or on any witness, not listed and served by that party as required by paragraph (a) of this section, except upon a promptly filed motion accompanied by the proposed additional documents or lists together with a showing of sufficient cause as to why they were not served by the date set pursuant to paragraph (a) of this section.

(2) Any failure to comply with an order under the provisions of paragraph (c) of this section may be considered by the Board of Patent Interferences as basis for applying appropriate restrictions against the party failing to comply, for holding certain facts to have been established, and in an appropriate case for awarding priority against him, or for taking such other action as may be deemed appropriate.

(e) The parties may by agreement among themselves modify any of the foregoing requirements consistent with the schedule of times for taking testimony and filing the record. In the absence of such agreement, discovery will not be permitted prior to the period set for the preparation for testimony.

[36 FR 8733, May 12, 1971, as amended at 43 FR 28479, June 30, 1978]

§ 1.288 Use of discovery.

(a) If a party intends to rely upon an admission or upon an answer to an interrogatory, obtained by discovery, the admission or answer may be introduced into evidence by filing, before the closing of the time for taking the testimony of the party (before the time for taking the testimony in chief if such admission or answer is not in rebuttal), a copy of the admission and the request therefor and/or a copy of the interrogatory and its answer, together with a notice of reliance thereon.

(b) A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence pursuant to §§ 1.271 to 1.286.

[46 FR 52363, Oct. 27, 1981]

PROTESTS AND PUBLIC USE PROCEEDINGS

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if (1) the protest is timely submitted; and (2) the protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible.

(b) A protest submitted in accordance with the second sentence of paragraph (a) of this section will be considered by the Office if it includes (1) a listing of the patents, publications or other information relied upon; (2) a concise explanation of the relevance of each listed item; (3) a copy of each listed patent or publication or other item of information in written form or at least the pertinent portions thereof; and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information in written form relied upon.

(c) An acknowledgment of the entry of a protest under paragraph (a) of this section in a reissue application file will be sent to the member of the public filing the protest. A member of the public filing a protest under paragraph (a) of this section in an application for an original patent will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office will communicate with the applicant regarding any protest entered in the application file and may require the applicant to supply information pursuant to paragraph (a) of § 1.56, including responses to specific questions raised by the protest, in order for the Office to decide any issues raised by the protest. The active participation of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest and no further submission on behalf of the protestor will be acknowledged or considered unless such submission raises new issues which could not have been earlier presented, and thereby constitutes a new protest.

[47 FR 21752, May 19, 1982]

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations is filed by one having information of the pendency of an application and is found, on reference to the primary examiner, to make a prima facie showing that the invention involved in an interference or claimed in an application believed to be on file had been in public use or on sale one year before the filing of the application, or before the date alleged by an interfering party in his preliminary statement or the date of invention established by such party, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, times may be set for taking testimony, which shall be taken as provided by §§ 1.271 to 1.286. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

(b) The petition and accompanying papers should either: (1) Reflect that a copy of the same has been served upon the applicant or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible. The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file.

[24 FR 10332; Dec. 22, 1959, as amended at 34 FR 18858, Nov. 26, 1969; 42 FR 5595, Jan. 28, 1977]

REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS BY COURT

§ 1.301 Appeal to U.S. Court of Customs and Patent Appeals.

Any applicant or any owner of a patent involved in a reexamination proceeding dissatisfied with the decision of the Board of Appeals, and any party to an interference dissatisfied with the decision of the Board of Patent Interferences, may appeal to the U.S. Court of Customs and Patent Appeals. The appellant must take the following steps in such an appeal: (a) In the Patent and Trademark Office give notice to the Commissioner and file the reasons of appeal (see §§ 1.302 and 1.304); (b) in the court, file a petition of appeal and a certified transcript of the record within a specified time after filing the reasons of appeal, and pay the fee for appeal, as provided by the rules of the court. The transcript will be transmitted to the Court by the Patent and Trademark Office on order of and at the expense of the appellant. Such order should be filed with the notice of appeal, but in no case should it be filed later than 15 days thereafter.

[46 FR 29184, May 29, 1981]

§ 1.302 Notice and reasons of appeal.

(a) When an appeal is taken to the U.S. Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and file in the Patent and Trademark Office, within the time specified in § 1.304, his reasons of appeal specifically set forth in writing.

(b) In interferences and other contested cases, the notice and reasons must be served as provided in § 1.248.

(35 U.S.C. 142)

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in a reexamination proceeding dissatisfied with the decision of the Board of Appeals, and any party dissatisfied with the decision of the Board of Patent Interferences, may, instead of appealing to the U.S. Court of Customs and Patent Appeals (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an ex parte case or an owner of a patent involved in a reexamination proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

(c) If a defeated party to an interference proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals, and any adverse party to the interference shall, within twenty days after the appellant shall have filed notice of the appeal to the court (§ 1.302), file notice with the Commissioner that he or she elects to have all further proceedings conducted as provided in 35 U.S.C. 146, certified copies of such notices will be transmitted to the U.S. Court of Customs and Patent Appeals for such action as may be necessary. The notice of election must be served as provided in § 1.248.

[46 FR 29184, May 29, 1981]

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice and reasons of appeal to the U.S. Court of Customs and Patent Appeals (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Appeals or the Board of Patent Interferences. If a request for rehearing or reconsideration, or modification of the decision, is filed within the time specified in § 1.197(b) or § 1.256(b), or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. The sixty and thirty day periods may be extended by the Commissioner upon a showing of sufficient cause.

(b) The times specified herein are calendar days. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or legal holiday, the time is extended to the next day which is neither a Saturday, Sunday nor a holiday.

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Customs and Patent Appeals and an adverse party has filed notice under 35 U.S.C. 141 that he elects to have all further proceedings conducted under 35 U.S.C. 146 (§ 1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141.

[41 FR 758, Jan. 5, 1976]

ALLOWANCE AND ISSUE OF PATENT

§ 1.311 Notice of allowance.

If, on examination, it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to him, his attorney or his agent, calling for the payment of a specified sum constituting the issue fee or a portion thereof, which shall be paid within 3 months from the date of the notice of allowance.

[30 FR 12844, Oct. 8, 1965]

§ 1.312 Amendments after allowance.

Amendments after the notice of allowance of an application will not be permitted as a matter of right. However, such amendments may be made if filed not later than the date the issue fee is paid, on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the case from issue.

[34 FR 6844, Apr. 24, 1969]

§ 1.313 Withdrawal from issue.

(a) After the notice of allowance of an application is sent, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the Office, a new notice of allowance will be sent if the application is again allowed.

(b) When the issue fee or that portion thereof specified in the notice of allowance has been paid, and the patent to be issued has received its date and number, the application will not be withdrawn from issue on account of any mistake or change of purpose of the applicant, his attorney or his agent, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the Office, or because of fraud or illegality in the application, or for interference.

[30 FR 12844, Oct. 8, 1965, as amended at 34 FR 18858, Nov. 26, 1969]

§ 1.314 Issuance of patent.

If payment of the issue fee or that portion thereof specified in the notice of allowance is timely made, the patent will issue in regular course.

[30 FR 12844, Oct. 8, 1965]

§ 1.315 Delivery of patent.

The patent will be delivered or mailed on the day of its date to the attorney or agent of record, if there be one; or if the attorney or agent so request, to the patentee or assignee of an interest therein; or, if there be no attorney or agent, to the patentee or to the assignee of the entire interest, if he so request.

(35 U.S.C. 151)

§ 1.316 Application abandoned for failure to pay issue fee.

(a) If the fee specified in the notice of allowance is not paid within 3 months from the date of the notice the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

(b) The Commissioner may accept the late payment of the fee specified in the notice of allowance later than three months after the mailing of the notice as though no abandonment had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by the issue fee or portion thereof specified in the notice of allowance, unless it has been previously submitted, the fee for delayed payment, and a showing in the form of an oath or declaration as to the causes of the delay.

[30 FR 12844, Oct. 8, 1965, as amended at 40 FR 44814, Sept. 30, 1975]

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

(a) Any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three month period.

(b) The Commissioner may accept the late payment of the balance of the issue fee after the three month period as though no lapse had ever occurred if upon petition the delay in payment is shown to have been unavoidable. The petition to accept the delayed payment must be accompanied by the remaining balance of the issue fee specified in the notice, unless it has been previously submitted, the fee for delayed payment, and a showing in the form of an oath or declaration as to the causes of the delay.

[40 FR 44814, Sept. 30, 1975]

§ 1.318 Notification of national publication of a patent based on an international application.

The Office will notify the International Bureau when a patent is issued on an application filed under 35 U.S.C. 371, and there has been no previous international publication.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20465, May 11, 1978]

DISCLAIMER

§ 1.321 Statutory disclaimer.

(a) A disclaimer under 35 U.S.C. 253 must identify the patent and the claim or claims which are disclaimed, and be signed by the person making the disclaimer, who shall state therein the extent of his interest in the patent. A disclaimer which is not a disclaimer of a complete claim or claims may be refused recordation. A notice of the disclaimer is published in the *Official Gazette* and attached to the printed copies of the specification. In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.

(b) A terminal disclaimer, when filed in an application to obviate a double patenting rejection, must include a provision that any patent granted on that application shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the rejection. See § 1.21 for fee.

[36 FR 7312, Apr. 17, 1971]

CORRECTION OF ERRORS IN PATENT

§ 1.322 Certificate of correction of Office mistake.

(a) A certificate of correction under 35 U.S.C. 254 may be issued at the request of the patentee or his assignee. Such certificate will not be issued at the request or suggestion of anyone not owning an interest in the patent, nor on motion of the Office, without first notifying the patentee (including any assignee of record) and affording him an opportunity to be heard.

(b) If the nature of the mistake on the part of the Office is such that a certificate of correction is deemed inappropriate in form, the Commissioner may issue a corrected patent in lieu thereof as a more appropriate form for certificate of correction, without expense to the patentee.

(35 U.S.C. 254)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 5550, Mar. 22, 1969]

§ 1.323 Certificate of correction of applicant's mistake.

Whenever a mistake of a clerical or typographical nature or of minor character which was not the fault of the Office, appears in a patent and a showing is made that such mistake occurred in good faith, the Commissioner may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination.

[34 FR 5550, Mar. 22, 1969]

§ 1.324 Correction of error in joining inventor.

Whenever a patent is issued and it appears that there was a misjoinder or nonjoinder of inventors and that such misjoinder or omission occurred by error and without deceptive intention, the Commissioner may, on application of all the parties and the assignees and satisfactory proof of the facts, or on order of a court before which such matter is called in question, issue a certificate deleting the misjoined inventor from the patent or adding the non-joined inventor to the patent.

(35 U.S.C. 256)

§ 1.325 Other mistakes not corrected.

Mistakes other than those provided for in §§ 1.322, 1.323, 1.324, and not affording legal grounds for reissue will not be corrected after the date of the patent.

ASSIGNMENTS AND RECORDING

§ 1.331 Recording of assignments.

(a) Assignments, including grants and conveyances, of patents, national applications, or international applications which designate the United States of America, will be recorded in the Patent and Trademark Office under 35 U.S.C. 261. Other instruments affecting title to a patent, a national application, or an international application which designates the United States of America, and licenses, even though the recording thereof may not serve as constructive notice under 35 U.S.C. 261, will be recorded as provided in this section or at the discretion of the Commissioner.

(b) No instrument will be recorded which is not in the English language and which does not amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates, and which does not identify the patent or application to which it relates, except as ordered by the Commissioner.

(c) An instrument relating to a patent should identify the patent by number and date (the name of the inventor and title of the invention as stated in the patent should also be given); an instrument relating to a national application, or an international application which designates the United States of America should identify the application by serial number or international application number and date of filing (the name of the inventor and title of the invention as stated in the application should also be given), but if an assignment is executed concurrently with or subsequent to the execution of the application but before the application is filed or before its serial number or international application number and filing date are ascertained, it should adequately identify the application, as by its date of execution and name of the inventor and title of the invention; so that there can be no mistake as to the patent or application intended.

(35 U.S.C. 261; Pub. L. 94-131, 89 Stat. 685)

[24 FR 10332, Dec. 22, 1959, as amended at 43 FR 20465, May 11, 1978]

§ 1.332 Receipt and recording.

Assignments are recorded in regular order as promptly as possible, and then transmitted with the date and identification of the record stamped thereon to the persons entitled to them. The date of the record is the date of the receipt of the assignment at the Office in proper form and accompanied by the full legal fee for recording specified in 35 U.S.C. 41(a)10.

(35 U.S.C. 261)

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18858, Nov. 26, 1969]

§ 1.333 Conditional assignments.

Assignments which are made conditional on the performance of certain acts or events, as the payment of money or other condition subsequent, if recorded in the Office are regarded as absolute assignments for Office purposes until cancelled with the written consent of both parties or by the decree of a competent court. The Office has no means for determining whether such conditions have been fulfilled.

(35 U.S.C. 261)

§ 1.334 Issue of patent to assignee.

In case of an assignment of the entire interest in the invention and application, or of the entire interest in the patent to be granted, the patent will normally issue to the assignee. If the assignee should hold an undivided part interest, the patent will normally issue jointly to the inventor and the assignee. If it is desired that the patent so issue the assignment in either case must first have been recorded, and at a day not later than the date payment is made of the issue fee or portion thereof specified in the notice of allowance. At the time of payment of the issue fee, a statement must be furnished indicating whether or not an assignment has been filed with the Patent and Trademark Office. In the event an assignment has been filed, such statement must include the name of the assignee and indicate whether or not an acknowledgment of a recorded assignment has been received from the Patent and Trademark Office.

[34 FR 17772, Nov. 4, 1969]

RECOGNITION OF ATTORNEYS AND AGENTS

AUTHORITY: Secs. 1.341 to 1.348 also issued under 35 U.S.C. 31, 32.

§ 1.341 Registration of attorneys and agents.

A register of attorneys and a register of agents are kept in the Patent and Trademark Office on which are entered the names of all persons recognized as entitled to represent applicants before the Patent and Trademark Office in the preparation and prosecution of applications for patent. Registration in the Patent and Trademark Office under the provisions of the regulations in this part shall only entitle the persons registered to practice before the Patent and Trademark Office.

(a) *Attorneys at law.* Any attorney at law in good standing admitted to practice before any United States Court or the highest court of any State or Territory of the United States who fulfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent and Trademark Office and have his name entered on the register of attorneys.

(b) *Agents.* Any citizen of the United States not an attorney at law who fulfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent and Trademark Office and have his name entered on the register of agents.

NOTE: All persons registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys at law or not, and such registrations have not been changed.

(c) *Requirements for registration.* No person will be admitted to practice and registered unless he shall apply to the Commissioner of Patents and Trademarks in writing on a prescribed form supplied by the Commissioner and furnish all requested information and material; and shall establish to the satisfaction of the Commissioner that he is of good moral character and of good repute and possessed of the legal and scientific and technical qualifications necessary to enable him to render applicants for patents valuable service, and is otherwise competent to advise and assist them in the presentation and prosecution of their applications before the Patent and Trademark Office. In order that the Commissioner may determine whether a person seeking to have his name placed upon either of the registers has the qualifications specified, satisfactory proof of good moral character and repute, and of sufficient basic training in scientific and technical matters must be submitted and an examination which is held from time to time must be taken and passed. Each application for admission to the examination for registration must be accompanied by the prescribed fee (see § 1.21). The taking of an examination may be waived in the case of any person who has actively served for four years in the examining corps of the Patent and Trademark Office.

(d) [Reserved]

(e) *Foreign patent attorneys and agents.* Any foreign patent attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent office of the country in which he resides and practices, and is possessed of the qualifications stated in paragraph (c) of this section, may be registered on the register of agents as entitled to represent applicants located in such country before the United States Patent and Trademark Office in the presentation and prosecution of applications: *Provided,* That the patent office of such country allows substantially reciprocal privileges to those admitted to practice before the United States Patent and Trademark Office. Such registration shall continue only during the period that the conditions specified obtain.

(f) *Government employees.* Officers and employees of the United States who are disqualified by statute (18 U.S.C. 203, 205) from practicing as attorneys or agents in proceedings or other matters before Government departments or agencies, may not be registered, and if any registered attorney or agent becomes such an officer or employee, his name on the register shall be endorsed as inactive during the period of such employment, but officers or employees whose official duties require the preparation and prosecution of applications for patent may be registered (on compliance with the regulations in this part) or recognized to practice, to the extent necessary to carry out their official duties.

(g) *Former examiners.* No person who has served in the examining corps of the Patent and Trademark Office will be registered after termination of his services, nor, if registered before such service, be reinstated, unless he undertakes: (1) Not to prosecute or aid in any manner in the prosecution of any application pending in any examining group during his period of service therein; and (2) not to prepare or prosecute nor to assist in any manner in the preparation or prosecution of any application of another filed within 2 years after the date he left such group, and assigned to such group, without the specific authorization of the Commissioner. Associated and related classes in other groups may be required to be included in the undertaking or designated classes may be excluded. In case application for registration or reinstatement is made after resignation from the Office, the applicant will not be registered, or reinstated, if he has prepared or prosecuted, or assisted in the preparation or prosecution of any such application as indicated in this paragraph. (See further 18 U.S.C. 207.)

(h) *Oath and registration fee.* Before his name may be entered on the register of attorneys or on the register of agents, every applicant for registration must, after his application is approved, subscribe and swear to an oath or make a declaration prescribed by the Commissioner of Patents and Trademarks and pay the prescribed registration fee. (See § 1.21(h).)

(i) *Committee on Enrollment.* The Commissioner may establish a Committee on Enrollment to receive and act upon applications for registration to practice before the Patent and Trademark Office, to conduct and supervise the examinations provided for in paragraph (c) of this section, to maintain the registers and to perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary; or such functions may be performed by designated officials of the Patent and Trademark Office. Any action of such committee or official may be reviewed by the Commissioner.

[24 FR 10332, Dec. 22, 1959, as amended at 30 FR 6391, May 7, 1965; 34 FR 18858, Nov. 26, 1969; 36 FR 12617, July 2, 1971]

NOTE: See § 2.12 for practice in trademark cases.

§ 1.342 Limited recognition.

Any person not registered and not entitled to be recognized under § 1.341 as an attorney or agent to represent applicants generally may, upon a showing of circumstances which render it necessary or justifiable, be recognized by the Commissioner to prosecute as attorney or agent a specified application or applications, but this limited recognition shall not extend further than the application or applications specified.

§ 1.343 Persons not registered or recognized.

Only persons who are registered or given limited recognition as provided in § 1.342 will be permitted to prosecute patent applications of others before the Patent and Trademark Office.

[36 FR 12617, July 2, 1971]

§ 1.344 Professional conduct.

Attorneys and agents appearing before the Patent and Trademark Office must conform to the standards of ethical and professional conduct set forth in the Code of Professional Responsibility of the American Bar Association as amended February 24, 1970, insofar as such code is not inconsistent with this part. A copy of the said code is available for inspection in the Office of the Solicitor, U.S. Patent and Trademark Office, Room 11C04, Building 3, Crystal Plaza, 2021 Jefferson Davis Highway, Arlington, VA. Copies of the code are available upon request to the American Bar Center, 1155 E. 60th Street, Chicago, IL 60637.

[36 FR 12617, July 2, 1971]

§ 1.345 Advertising.

(a) The use of advertising, circulars, letters, cards, and similar material to solicit patent business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent and Trademark Office or may be suspended, excluded or disbarred from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories shall not be considered a violation of this rule.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent and Trademark Office, represent himself to be an attorney, solicitor or lawyer.

[23 FR 8622, Nov. 5, 1958]

§ 1.346 Signature and certificate of attorney.

Every paper filed by an attorney or agent representing an applicant or party to a proceeding in the Patent and Trademark Office must bear the signature of such attorney or agent, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits or declarations required of applicants). The signature of an attorney or agent to a paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief, there is good ground to support it; including any allegations of improper conduct contained therein; and that it is not interposed for delay.

[42 FR 5595, Jan. 28, 1977]

§ 1.347 Removing names from registers.

Attorneys and agents, registered to practice before the Patent and Trademark Office, should notify the Office of any change of address for entry on the register, by letter separate from any notice of change of address filed in individual applications. The Office may address a letter to any person on the registers, at the address of which separate notice for the register was last received, for the purpose of ascertaining whether such person desires to remain on the register. The name of any person failing to reply and give the information requested within a time limit specified will be removed from the register, and the names so removed published in the *Official Gazette*. Any name so removed may be reinstated, either on the register of attorneys or the register of agents, as may be appropriate.

[36 FR 12618, July 2, 1971]

§ 1.348 Suspension or disbarment proceedings.

Except as otherwise provided, proceedings for suspension, disbarment, or exclusion from practice are before a Commissioner.

(a) *Investigating and prosecuting officer.* The duties of investigation, preparing charges, collecting and presenting testimony, and presenting a case for suspension, exclusion from practice or disbarment shall be performed by the Solicitor of the Patent and Trademark Office or, at his direction, by a designated law examiner or other person, and neither the Solicitor nor such law examiner or other person shall participate in any manner in the decision of the case. If, upon investigation of a complaint or other information concerning an attorney or agent, it shall appear to the Solicitor that grounds for suspension, exclusion from practice, or disbarment exist, he shall prepare and forward the necessary notice and statement.

(b) *Notice of proceedings.* Proceedings for suspension or disbarment shall be instituted by the Solicitor by mailing to, or otherwise serving on, the respondent a notice of such proceeding with a statement of the charges against him, at the same time forwarding a copy to the Commissioner. It shall be the duty of the respondent to answer the charges as specified in paragraph (c) of this section.

(c) *Answer.* The respondent's answer shall be filed in writing with the Commissioner within one month from the time the notice is served on the respondent, or within such extension of time as may be allowed by the Commissioner for good cause shown. The answer shall be under oath or declaration. Failure to answer within the time allowed will be taken as an admission of the charges. The respondent in his answer should specifically admit or deny every material allegation of fact in the statement of charges; every allegation not denied shall be deemed admitted, unless the respondent states that he has no knowledge thereof sufficient to form a belief, which statement shall be considered a denial. Any special matters of defense shall be stated affirmatively in the answer. False statements in the answer may be made the basis of supplemental charges.

(d) *Hearing.* (1) Unless the Commissioner finds the answer sufficient to dispose of the charges, he will set the case for hearing before him, notifying the respondent and the Solicitor of the place, day and time of commencement of the hearing. Evidence as to the matters in issue may be submitted at the hearing, the testimony of witnesses being presented orally, under oath and reported.

(2) The hearing may be advanced and continued by the Commissioner, as far as may be deemed convenient and proper.

(3) Depositions for use at the hearing in lieu of personal appearance of witnesses may be taken by either the Solicitor or the respondent on application to and with the written consent of the Commissioner within such times and under such conditions as the Commissioner may prescribe.

(e) *Hearing officer.* The Commissioner may, in his discretion, delegate the conduct of the hearing to a hearing or trial examiner who shall be the presiding officer and who shall make a recommended decision.

(f) *Administrative Procedure Act.* Proceedings shall be governed, in matters not specifically set forth herein, by the provisions of the Administrative Procedure Act, 60 Stat. 237; 5 U.S.C. 1001-1011, which may be applicable.

[24 FR 10332, Dec. 22, 1959, as amended at 34 FR 18858, Nov. 26, 1969]

AMENDMENT OF RULES

§ 1.351 Amendments to rules will be published.

All amendments to the regulations in this part will be published in the *Official Gazette* and in the FEDERAL REGISTER.

§ 1.352 Publication of notice of proposed amendments.

(a) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to the regulations in this part will be published in the *Official Gazette* and in the FEDERAL REGISTER. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof.

(b) Oral hearings may be held at the discretion of the Commissioner.

Subpart C—International Processing Provisions

AUTHORITY: Pub. L. 94-131, 89 Stat. 685.

SOURCE: 43 FR 20466, May 11, 1978, unless otherwise noted.

GENERAL INFORMATION

§ 1.401 Definitions of terms under the Patent Cooperation Treaty.

(a) The abbreviation "PCT" and the term "Treaty" mean the Patent Cooperation Treaty.

(b) "International Bureau" means the World Intellectual Property Organization located in Geneva, Switzerland.

(c) "Administrative Instructions" means that body of instructions for operating under the Patent Cooperation Treaty referred to in PCT Rule 89.

(d) "Request", when capitalized, means that element of the international application described in PCT Rules 3 and 4.

(e) "International application", as used in this subchapter is defined in § 1.9(b).

(f) "Priority date" for the purpose of computing time limits under the Patent Cooperation Treaty is defined in PCT Art. 2 (xi). Note also § 1.465.

(g) Other terms and expressions in this Subpart C not defined in this section are to be taken in the sense indicated in PCT Art. 2 and 35 U.S.C. 351.

§ 1.412 The United States Receiving Office.

(a) The United States Patent and Trademark Office is a Receiving Office only for applicants who are residents or nationals of the United States of America.

(b) The Patent and Trademark Office, when acting as a Receiving Office, will be identified by the full title "United States Receiving Office" or by the abbreviation "RO/US."

(c) The major functions of the Receiving Office include:

(1) According of international filing dates to international applications meeting the requirements of PCT Art. 11(1), and PCT Rule 20;

(2) Assuring that international applications meet the standards for format and content of PCT Art. 14(1), PCT Rule 9, 26, 29.1, 37, 38, 91, and portions of PCT Rules 3 through 11;

(3) Collecting and, when required, transmitting fees due for processing international applications (PCT Rule 14, 15, 16);

(4) Transmitting the record and search copies to the International Bureau and International Searching Authority, respectively (PCT Rules 22 and 23); and

(5) Determining compliance with applicable requirements of Part 5 of this chapter.

§ 1.413 The United States International Searching Authority.

(a) Pursuant to appointment by the Assembly, the United States Patent and Trademark Office will act as an International Searching Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Commissioner, in accordance with agreement between the Patent and Trademark Office and the International Bureau (PCT Art. 16(3)(b)).

(b) The Patent and Trademark Office, when acting as an International Searching Authority, will be identified by the full title "United States International Searching Authority" or by the abbreviation "ISA/US."

(c) The major functions of the International Searching Authority include:

(1) Approving or establishing the title and abstract;

(2) Considering the matter of unity of invention;

(3) Conducting international and international-type searches and preparing international and international-type search reports (PCT Art. 15, 17 and 18, and PCT Rules 25, 33 to 45 and 47); and

(4) Transmitting the international search report to the applicant and the International Bureau.

§ 1.414 The United States Designated Office.

(a) The United States Patent and Trademark Office will act as a Designated Office for international applications in which the United States of America has been designated as a State in which patent protection is desired.

(b) The Patent and Trademark Office, when acting as a Designated Office during international processing will be identified by the full title "United States Designated Office" or by the abbreviation "DO/US."

(c) The major functions of the United States Designated Office in respect to international applications in which the United States of America has been designated, include:

(1) Receiving various notifications throughout the international stage;

(2) Accepting for regular national patentability examination international applications which satisfy the requirements of 35 U.S.C. 371; and

(3) Conducting reviews under PCT Article 25 for those international applications declared withdrawn.

§ 1.415 The International Bureau.

(a) The International Bureau is the World Intellectual Property Organization located at Geneva, Switzerland. It is the international intergovernmental organization which acts as the coordinating body under the Treaty and the Regulations (PCT Art. 2 (xix) and 35 U.S.C. 351 (h)).

(b) The major functions of the International Bureau include:

(1) Publishing of international applications and the International Gazette;

(2) Transmitting copies of international applications to Designated Offices;

(3) Storing and maintaining record copies; and

(4) Transmitting information to authorities pertinent to the processing of specific international applications.

WHO MAY FILE AN INTERNATIONAL APPLICATION

§ 1.421 Applicant for international application.

(a) Only residents or nationals of the United States of America may file international applications in the United States Receiving Office.

(b) Although the United States Receiving Office will accept international applications filed by any resident or national of the United States of America for international processing, an international application designating the United States of America will be accepted by the Patent and Trademark Office for the national stage only if filed by the inventor or as provided in §§ 1.422, 1.423 or § 1.425.

(c) International applications which do not designate the United States of America may be filed by the assignee or owner.

(d) The attorney or agent of the applicant may sign the international application Request and file the international application for the applicant if the international application when filed is accompanied by a separate power of attorney to that attorney or agent from the applicant. The separate power of attorney from the applicant may be submitted after filing if sufficient cause is shown for not submitting it at the time of filing. Note that paragraph (b) of this section requires that the applicant be the inventor if the United States of America is designated.

(e) Any indication of different applicants for the purpose of different Designated Offices must be shown on the Request portion of the international application.

(f) Changes in the person, name, or address of the applicant of an international application shall be made in accordance with PCT Rule 18.5.

§ 1.422 When the inventor is dead.

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may file an international application which designates the United States of America.

§ 1.423 When the inventor is insane or legally incapacitated.

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may file an international application which designates the United States of America.

§ 1.424 Joint inventors.

Joint inventors must jointly file an international application which designates the United States of America; the signature of either of them alone, or less than the entire number will be insufficient for an invention invented by them jointly, except as provided in § 1.425.

§ 1.425 Filing by other than inventor.

(a) If a joint inventor refuses to join in an international application which designates the United States of America or cannot be found or reached after diligent effort, the international application which designates the United States of America may be filed by the other inventor on behalf of himself or herself and the omitted inventor. Such an international application which designates the United States of America must be accompanied by proof of the pertinent facts and must state the last known address of the omitted inventor. The Patent and Trademark Office shall forward notice of the filing of the international application to the omitted inventor at said address.

(b) Whenever an inventor refuses to execute an international application which designates the United States of America, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may file the international application on behalf of and as agent for the inventor. Such an international application which designates the United States of America, must be accompanied by proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, and must state the last known address of the inventor. The assignment, written agreement to assign or other evidence of proprietary interest, or a verified copy thereof, must be filed in the Patent and Trademark Office. The Office shall forward notice of the filing of the application to the inventor at the address stated in the application.

THE INTERNATIONAL APPLICATION

§ 1.431 International application requirements.

(a) An international application shall contain, as specified in the Treaty and the Regulations, a Request, a description, one or more claims, an abstract, and one or more drawings (where required). (PCT Art. 3(2) and Section 207 of the Administrative Instructions.)

(b) An international filing date will be accorded by the United States Receiving Office, at the time of receipt of the international application, provided that:

(1) The applicant is a United States resident or national (35 U.S.C. 361(a), PCT Art. 11(1)(i)).

(2) The international application is in the English language (35 U.S.C. 361(c), PCT Art. 11(1)(ii)).

(3) The international application contains at least the following elements (PCT Art. 11(1)(iii)):

(i) An indication that it is intended as an international application (PCT Rule 4.2);

(ii) The designation of at least one Contracting State of the International Patent Cooperation Union;

(iii) The name of the applicant, as prescribed (note § 1.422);

(iv) A part which on the face of it appears to be a description; and

(v) A part which on the face of it appears to be a claim.

(c) Payment of the basic portion of the international fee (PCT Rule 15.2) and the transmittal and search fees (§ 1.445) shall be made in full at the time the international application papers required by paragraph (b) of this section are deposited. Failure to make full payment on the same date as the deposit of the international application papers required by subparagraph (b) of this section will result in the international application being considered withdrawn (PCT Art. 14(3)(a)).

§ 1.432 Designation of States and payment of designation fees.

(a) The names of Designated States shall appear in the Request upon filing and must be indicated as set forth in Section 201 of the Administrative Instructions.

(b) The designation fees may be paid upon filing of the international application, but must be paid at the latest before the expiration of one year from the priority date (PCT Rule 15.4(b)). Failure to timely pay the designation fee for a particular Designated State will result in the withdrawal of that designation (PCT Art. 14(3)(b)). Failure to timely pay at least one designation fee will result in the withdrawal of the international application (PCT Art. 14(3)(a)).

§ 1.433 Physical requirements of international application.

(a) The international application and each of the documents that may be referred to in the check list of the Request (PCT Rule 3.3(a)(ii)) shall be filed in one copy only.

(b) All sheets of the international application must be on A4 size paper (21.0 x 29.7 cm.).

(c) Other physical requirements for international applications are set forth in PCT Rule 11 and Sections 201-207 of the Administrative Instructions.

§ 1.434 The request.

(a) The request shall be made on a standardized printed form (PCT Rules 3 and 4). Copies of such printed Request forms are available from the Patent and Trademark Office. Letters requesting such forms should be marked "Box PCT."

(b) The Check List portion of the Request form should indicate each document accompanying the international application on filing.

(c) All information, for example, addresses, names of States and dates, shall be indicated in the Request as required by PCT Rule 4 and Administrative Instructions 110 and 201.

(d) International applications which designate the United States of America shall include:

(1) The name, address and signature of the inventor, except as provided by §§ 1.421(d), 1.422, 1.423 and 1.425;

(2) A reference to any copending national application or international application designating the United States of America, if the benefit of the filing date for the prior copending application is to be claimed.

§ 1.435 The description.

(a) Requirements as to the content and form of the description are set forth in PCT Rules 5, 9, 10 and 11 and Administrative Instruction 204, and shall be adhered to.

(b) In international applications designating the United States the description must contain upon filing an indication of the best mode contemplated by the inventor for carrying out the claimed invention.

§ 1.436 The claims.

The requirements as to the content and format of claims are set forth in PCT Art. 6 and PCT Rules 6, 9, 10 and 11 and shall be adhered to. The number of the claims shall be reasonable, considering the nature of the invention claimed.

§ 1.437 The drawings.

(a) Subject to paragraph (b) of this section, when drawings are necessary for the understanding of the invention, or are mentioned in the description, they must be part of an international application as originally filed in the United States Receiving Office in order to maintain the international filing date during the national stage (PCT Art. 7).

(b) Drawings missing from the application upon filing will be accepted if such drawings are received within 30 days of the date of first receipt of the incomplete papers. If the missing drawings are received within the 30-day period, the international filing date shall be the date on which such drawings are received. If such drawings are not timely received, all references to drawings in the international application shall be considered non-existent (PCT Art. 14(2), Administrative Instruction 310).

(c) The physical requirements for drawings are set forth in PCT Rule 11 and shall be adhered to.

§ 1.438 The abstract.

(a) Requirements as to the content and form of the abstract are set forth in PCT Rule 8, and shall be adhered to.

(b) Lack of an abstract upon filing of an international application will not affect the granting of a filing date. However, failure to furnish an abstract within one month from the date of the notification by the Receiving Office will result in the international appplication being declared withdrawn.

FEES

§ 1.445 International application filing and processing fees.

(a) The following fees and charges are established by the Patent and Trademark Office under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14)—$35.

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16)—$300.

(3) A supplemental search fee when required (see PCT Art. 17(3)(a) and PCT Rule 40.2)—$200 per additional invention.

(4) The national fee, that is, the amount set forth as the filing fee under 35 U.S.C. 41(a)(1).

(5) A special fee when required (see 35 U.S.C. 372(c))—$10 per claim.

(b) The basic fee and designation fee portions of the international fee shall be as prescribed in PCT Rule 15.

§ 1.446 Refund of international application filing and processing fees.

(a) Money paid for international application fees, where paid by actual mistake or in excess, such as a payment not required by law or Treaty and its Regulations, will be refunded.

(b) Refunds of a portion of the search fee may be made if the international search report is wholly or partly based on an earlier international or international-type search (PCT Rules 16 and 41). The amount of the refund will be as determined by the examiner according to the value of the prior international-type search or international search as 90%, 45% or 0% of the international search fee. If the amount of the refund is not a multiple of $5, it will be rounded to the next higher multiple of $5. See § 1.26 for refund of a portion of the international search fee during subsequent national examination of the application.

(c) Refund of the supplemental search fees will be made if such refund is determined to be warranted by the Commissioner or the Commissioner's designee acting under PCT Rule 40.2(c).

(d) The international and search fees will be refunded if no international filing date is accorded (PCT Rules 15.6 and 16.2).

PRIORITY

§ 1.451 The priority claim and priority document in an international application.

(a) The claim for priority must be made on the Request (PCT Rule 4.10) in a manner complying with Section 110 and 201 of the Administrative Instructions.

(b) Whenever the priority of an earlier United States national application is claimed in an international application, the applicant may request in a letter of transmittal accompanying the international application upon filing with the United States Receiving Office, that the Patent and Trademark Office prepare a certified copy of the national application for transmittal to the International Bureau (PCT Art. 8 and PCT Rule 17). The fee for preparing a certified copy is stated in § 1.21(b) and 35 U.S.C. 41(11).

(c) If a certified copy of the priority document is not submitted together with the international application on filing, or, if the priority application was filed in the United States and a request and appropriate payment for preparation of such a certified copy do not accompany the international application on filing, the certified copy of the priority document must be transmitted directly by the applicant to the International Bureau within the time limit specified in PCT Rule 17.1(a).

REPRESENTATION

§ 1.455 Representation in international applications.

(a) Applicants of international applications may be represented by attorneys or agents licensed to practice before the Patent and Trademark Office or by a common representative (PCT Art. 49, Rules 4.8 and 90 and § 1.341).

(b) Appointment of an agent, attorney or common representative (PCT Rule 4.8) must be effected either in the Request form, signed by all applicants, or in a separate power of attorney submitted either to the United States Receiving Office or to the International Bureau.

(c) Powers of attorney and revocations thereof should be submitted to the United States Receiving Office until the issuance of the international search report.

(d) The addressee for correspondence will be as indicated in Section 108 of the Administrative Instructions.

TRANSMITTAL OF RECORD COPY

§ 1.461 Procedures for transmittal of record copy to the International Bureau.

(a) Transmittal of the record copy of the international application to the International Bureau shall be made, at the option of the applicant, either by the United States Receiving Office or by the applicant. Subject to paragraph (b) of this section, any applicant who chooses to make such transmittal personally shall notify the United States Receiving Office to that effect in writing, by way of a notice filed together with the international application. Such notice shall also state whether the applicant wishes to collect the record copy at the United States Receiving Office or to have the record copy mailed directly to him. The record copy of an international application which was filed without being accompanied by such notice will be transmitted to the International Bureau by the United States Receiving Office (PTC Rule 22).

(b) An applicant may transmit the record copy to the International Bureau as privided in PCT Rule 22.2 only if the international application is filed with the United States Receiving Office before the expiration of 11 months from the priority date.

(c) No copy of an international application may be transmitted to the International Bureau, a foreign Designated Office, or other foreign authority by the United States Receiving Office or the applicant, unless the applicable requirements of Part 5 of this chapter have been satisfied.

TIMING

§ 1.465 Timing of application processing based on the priority date.

(a) For the purpose of computing time limits under the Treaty, the priority date shall be defined as in PCT Art. 2(xi).

(b) When a claimed priority date is cancelled under PCT Rule 4.10(d), or considered not to have been made under PCT Rule 4.10(b), the priority date for the purposes of computing time limits will be the date of the earliest valid remaining priority claim of the international application, or i none, the international filing date.

(c) When corrections under PCT Art. 11(2), Art. 14(2) or PCT Rule 20.2(a)(i) or (iii) are timely submitted and the date of receipt of such corrections falls later than one year from the claimed priority date or dates, the Receiving Office shall proceed under PCT Rule 4.10(d).

§ 1.468 Delays in meeting time limits.

Delays in meeting time limits during international processing of international applications may only be excused as provided in PCT Rule 82. For delays in meeting time limits in a national application, see § 1.137.

AMENDMENTS

§ 1.471 Corrections and amendments during international processing.

(a) All corrections submitted to the United States Receiving Office must be in the form of replacement sheets and be accompanied by a letter that draws attention to the differences between the replaced sheets and the replacement sheets, except that the deletion of lines of text, the correction of simple typographical errors, and one addition or change of not more than five words per sheet may be stated in a letter and the United States Receiving Office will make the deletion or transfer the correction to the international application, provided that such corrections do not adversely affect the clarity and direct reproducibility of the application (PCT Rule 26.4).

(b) Amendments of claims submitted to the International Bureau shall be as prescribed by PCT Rule 46.

§ 1.475 Changes in person, name, or address of applicants and inventors.

All requests for a change in person, name or address of applicants and inventor be sent to the United States Receiving Office until the time of issuance of the international search report. Thereafter requests for such changes should be submitted to the International Bureau.

UNITY OF INVENTION

§ 1.481 Determination of unity of invention before the International Searching Authority.

(a) Before establishing the international search report, the International Searching Authority shall determine whether the international application complies with the requirement of unity of invention as set forth in PCT Rule 13 and as set forth in §§ 1.141 and 1.146 except as modified below in this section.

(b) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention, it shall inform the applicant accordingly and invite the payment of additional fees (note § 1.445 and PCT Art. 17(3)(a) and PCT Rule 40). The applicant will be given a time period in accordance with PCT Rule 40.3 to pay the additional fees due.

(c) In the case of non-compliance with unity of invention and where no additional fees are paid, the international search will be performed on the invention first mentioned ("main invention") in the claims.

(d) Lack of unity of invention may be directly evident before considering the claims in relation to any prior art, or after taking the prior art into consideration, as where a document discovered during the search shows the invention claimed in a generic or linking claim lacks novelty or is clearly obvious, leaving two or more claims joined thereby without a common inventive concept. In such a case the International Searching Authority may raise the objection of lack of unity of invention.

§ 1.482 Protest to lack of unity of invention.

(a) If the applicant disagrees with the holding of lack of unity of invention by the International Searching Authority, additional fees may be paid under protest, accompanied by a request for refund and a statement setting forth reasons for disagreement or why the required additional fees are considered excessive, or both (PCT Rule 40.2(c)).

(b) Protest under paragraph (c) of this section will be examined by the Commissioner or the Commissioner's designee. In the event that the applicant's protest is determined to be justified, the additional fees or a portion thereof will be refunded.

(c) An applicant who desires that a copy of the protest and the decision thereon accompany the international search report when forwarded to the Designated Offices, may notify the International Searching Authority to that effect any time prior to the issuance of the international search report. Thereafter, such notification should be directed to the International Bureau (PCT Rule 40.2(c)).

Subpart D—Reexamination of Patents

SOURCE: 46 FR 29185, May 29, 1981, unless otherwise noted.

CITATION OF PRIOR ART

§ 1.501 Citation of prior art in patent files.

(a) At any time during the period of enforceability of a patent, any person may cite to the Patent and Trademark Office in writing prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of a particular patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an explanation of how the claims differ from the prior art. Citations by the patent owner under § 1.555 and by a reexamination requester under either § 1.510 or § 1.535 will be entered in the patent file during a reexamination proceeding. The entry in the patent file of citations submitted after the date of an order to reexamine pursuant to § 1.525 by persons other than the patent owner, or a reexamination requester under either § 1.510 or § 1.535, will be delayed until the reexamination proceedings have been terminated.

(b) If the person making the citation wishes his or her identity to be excluded from the patent file and kept confidential, the citation papers must be submitted without any identification of the person making the submission.

(c) Citation of patents or printed publications by the public in patent files should either: (1) Reflect that a copy of the same has been mailed to the patent owner at the address as provided for in § 1.33(c); or in the event service is not possible (2) be filed with the Office in duplicate.

REQUEST FOR REEXAMINATION

§ 1.510 Request for reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for reexamination by the Patent and Trademark Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the fee for requesting reexamination set in § 1.21(x).

(b) Any request for reexamination must include the following parts:

(1) A statement pointing out each substantial new question of patentability based on prior patents and printed publications.

(2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. If appropriate the party requesting reexamination may also point out how claims distinguish over cited prior art.

(3) A copy of every patent or printed publication relied upon or referred to in paragraph (b) (1) and (2) of this section accompanied by an English language translation of all the necessary and pertinent parts of any non-English language patent or printed publication.

(4) The entire specification (including claims) and drawings of the patent for which reexamination is requested must be furnished in the form of cut-up copies of the original patent with only a single column of the printed patent securely mounted or reproduced in permanent form on one side of a separate paper. A copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent must also be included.

(5) A certification that a copy of the request filed by a person other than the patent owner has been served in its entirety on the patent owner at the address as provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy must be supplied to the Office.

(c) If the request does not include the fee for requesting reexamination or all of the parts required by paragraph (b) of this section, the person identified as requesting reexamination will be so notified and given an opportunity to complete the request within a specified time. If the fee for requesting reexamination has been paid but the defect in the request is not corrected within the specified time, the determination whether or not to institute reexamination will be made on the request as it then exists. If the fee for requesting reexamination has not been paid, no determination will be made and the request will be placed in the patent file as a citation if it complies with the requirements of § 1.501(a).

(d) The filing date of the request is: (1) The date on which the request including the entire fee for requesting reexamination is received in the Patent and Trademark Office; or (2) the date on which the last portion of the fee for requesting reexamination is received.

(e) A request filed by the patent owner. may include a proposed amendment in accordance with § 1.121(f).

(f) If a request is filed by an attorney or agent identifying another party on whose behalf the request is being filed, the attorney or agent must have a power of attorney from that party or be acting in a representative capacity pursuant to § 1.34(a).

§ 1.515 Determination of the request for reexamination.

(a) Within three months following the filing date of a request for reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. The examiner's determination will be based on the claims in effect at the time of the determination and will become a part of the official file of the patent and will be given or mailed to the patent owner at the address as provided for in § 1.33(c) and to the person requesting reexamination.

(b) Where no substantial new question of patentability has been found, a refund of a portion of the fee for requesting reexamination will be made to the requester in accordance with § 1.26(c).

(c) The requester may seek review by a petition to the Commissioner under § 1.181 within one month of the mailing date of the examiner's determination refusing reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

§ 1.520 Reexamination at the initiative of the Commissioner.

The Commissioner, at any time during the period of enforceability of a patent, may determine whether or not a substantial new question of patentability is raised by patents or printed publications which have been discovered by the Commissioner or which have been brought to the Commissioner's attention even though no request for reexamination has been filed in accordance with § 1.510. The Commissioner may initiate reexamination without a request for reexamination pursuant to § 1.510. Normally requests from outside the Patent and Trademark Office that the Commissioner undertake reexamination on his own initiative will not be considered. Any determination to initiate reexamination under this section will become a part of the official file of the patent and will be given or mailed to the patent owner at the address as provided for in § 1.33(c).

REEXAMINATION

§ 1.525 Order to reexamine.

(a) If a substantial new question of patentability is found pursuant to § 1.515 or § 1.520, the determination will include an order for reexamination of the patent for resolution of the question. If the order for reexamination resulted from a petition pursuant to § 1.515(c), the reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.515(a).

(b) If the order for reexamination of the patent mailed to the patent owner at the address as provided for in § 1.33(c) is returned to the Office undelivered, the notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice and reexamination will proceed.

§ 1.530 Statement and amendment by patent owner.

(a) Except as provided in § 1.510(e), no statement or other response by the patent owner shall be filed prior to the determinations made in accordance with §§ 1.515 or 1.520. If a premature statement or other response is filed by the patent owner it will not be acknowledged or considered in making the determination.

(b) The order for reexamination will set a period of not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability including any proposed amendments the patent owner wishes to make.

(c) Any statement filed by the patent owner shall clearly point out why the subject matter as claimed is not anticipated or rendered obvious by the prior art patents or printed publications, either alone or in any reasonable combinations. Any statement filed must be served upon the reexamination requester in accordance with § 1.248.

(d) Any proposed amendments to the description and claims must be made in accordance with § 1.121(f). No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amended or new claims may be proposed for entry in an expired patent. Moreover, no amended or new claims will be incorporated into the patent by certificate issued after the expiration of the patent.

(e) Although the Office actions will treat proposed amendments as though they have been entered, the proposed amendments will not be effective until the reexamination certificate is issued.

§ 1.535 Reply by requester.

A reply to the patent owner's statement under § 1.530 may be filed by the reexamination requester within two months from the date of service of the patent owner's statement. Any reply by the requester must be served upon the patent owner in accordance with § 1.248. If the patent owner does not file a statement under § 1.530, no reply or other submission from the reexamination requester will be considered.

§ 1.540 Consideration of responses.

The failure to timely file or serve the documents set forth in § 1.530 or in § 1.535 may result in their being refused consideration. No submissions other than the statement pursuant to § 1.530 and the reply by the requester pursuant to § 1.535 will be considered prior to examination.

§ 1.550 Conduct of reexamination proceedings.

(a) All reexamination proceedings, including any appeals to the Board of Appeals, will be conducted with special dispatch within the Office. After issuance of the reexamination order and expiration of the time for submitting any responses thereto, the examination will be conducted in accordance with §§ 1.104-1.119 and will result in the issuance of a reexamination certificate under § 1.570.

(b) The patent owner will be given at least 30 days to respond to any Office action Such response may include further statements in response to any rejections and/or proposed amendments or new claims to place the patent in a condition where all the claims, if amended as proposed, would be patentable.

(c) The time for reply set in paragraph (b) of this section will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of the request effect any extension.

(d) If the patent owner fails to file a timely and appropriate response to any Office action, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.570 in accordance with the last action of the Office.

(e) The reexamination requester will be sent copies of Office actions issued during the reexamination proceeding. Any document filed by the patent owner must be served on the requester in the manner provided in § 1.248. The document must reflect service or the document may be refused consideration by the Office. The active participation of the reexamination requester ends with the reply pursuant to § 1.535, and no further submissions on behalf of the reexamination requester will be acknowledged or considered. Further, no submissions on behalf of any third parties will be acknowledged or considered unless such submissions are (1) in accordance with § 1.510 or (2) entered in the patent file prior to the date of the order to reexamine pursuant to § 1.525. Submissions by third parties, filed after the date of the order to reexamine pursuant to § 1.525, must meet the requirements of and will be treated in accordance with § 1.501(a).

§ 1.552 Scope of reexamination in reexamination proceedings.

(a) Patent claims will be reexamined on the basis of patents or printed publications.

(b) Amended or new claims presented during a reexamination proceeding must not enlarge the scope of the claims of the patent and will be examined on the basis of patents or printed publications and also for compliance with the requirements of 35 U.S.C. 112 and the new matter prohibition of 35 U.S.C. 132.

(c) Questions other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding. If such questions are discovered during a reexamination proceeding, the existence of such questions will be noted by the examiner in an Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such questions considered and resolved.

§ 1.555 Duty of disclosure in reexamination proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the patent owner, on each attorney or agent who represents the patent owner, and on every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. All such individuals who are aware, or become aware, of patents or printed publications material to the reexamination which have not been previously made of record in the patent file must bring such patents or printed publications to the attention of the Office. A prior art statement, preferably in accordance with § 1.98, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible in order to bring such patents or printed publications to the attention of the Office.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility on behalf of the patent owner for the reexamination proceeding or through a patent owner acting in his or her own behalf. Disclosure to such an attorney, agent or patent owner shall satisfy the duty of any other individual. Such an attorney, agent or patent owner has no duty to transmit information which is not material to the reexamination.

(c) The duties of candor, good faith, and disclosure required in paragraph (a) of this section have not been complied with if any fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or gross negligence by, or on behalf of, the patent owner in the reexamination proceeding.

(d) The responsibility for compliance with this section rests upon the individuals identified in paragraph (a) of this section and no evaluation will be made in the reexamination proceeding by the Office as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

[47 FR 21752, May 19, 1982]

§ 1.560 Interviews in reexamination proceedings.

(a) Interviews in reexamination proceedings pending before the Office between examiners and the owners of such patents or their attorneys or agents of record must be had in the Office at such times, within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews for the discussion of the patentability of claims in patents involved in reexamination proceedings will not be had prior to the first official action thereon. Interviews should be arranged for in advance. Requests that reexamination requesters participate in interviews with examiners will not be granted.

(b) In every instance of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner. An interview does not remove the necessity for response to Office actions as specified in § 1.111.

§ 1.565 Concurrent office proceedings.

(a) In any reexamination proceeding before the Office, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissue, reexaminations, or litigation and the results of such proceedings.

(b) If a patent in the process of reexamination is or becomes involved in interference proceedings or litigation, or a reissue application for the patent is filed or pending, the Commissioner shall determine whether or not to stay the reexamination, reissue or interference proceeding.

(c) If reexamination is ordered while a prior reexamination proceeding is pending, the reexamination proceedings will be consolidated and result in the issuance of a single certificate under § 1.570.

(d) If a reissue application and a reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the two proceedings. Where merger of a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171 through 1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and any responses by the patent owner in a merged proceeding will apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

[46 FR 29185, May 29, 1981, as amended at 47 FR 21753, May 19, 1982]

CERTIFICATE

§ 1.570 Issuance of reexamination certificate after reexamination proceedings.

(a) Upon the conclusion of reexamination proceedings, the Commissioner will issue a certificate in accordance with 35 U.S.C. 307 setting forth the results of the reexamination proceeding and the content of the patent following the reexamination proceeding.

(b) A certificate will be issued in each patent in which a reexamination proceeding has been ordered under § 1.525. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be mailed on the day of its date to the patent owner at the address as provided for in § 1.33(c). A copy of the certificate will also be mailed to the requester of the reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with regard to that patent or any reissue applications or reexamination requests relating thereto.

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(d) the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each certificate under this section will be published in the *Official Gazette* on its date of issuance.

[46 FR 29185, May 29, 1981, as amended at 47 FR 21753, May 19, 1982]

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

CODIFICATION NOTE: Part 2 is placed in a separate grouping of parts pertaining to trademarks. It appears on page 143 of this volume.

PART 3—FORMS FOR PATENT CASES

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3.11a Declaration to accompany application for patent.
3.12 Oath to accompany application for patent, by an administrator (or executor).
3.12a Declaration to accompany application for patent by an administrator (or executor).
3.13 Oath not accompanying application.
3.13a Declaration not accompanying application.
3.14 Supplemental oath for amendment presenting claims for matter disclosed but not originally claimed.
3.14a Supplemental declaration for amendment presenting claims for matter disclosed but not originally claimed.
3.16 Combined oath and power of attorney in original application.
3.16a Combined declaration and power of attorney in original application.
3.17 Oath in division or continuation application.

Sec.
3.17a Declaration in division or continuation application.
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3.18a Declaration in copending application containing additional subject matter.
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3.28 Reissue application by the inventor, offer to surrender.
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3.31 Reissue application, oath; by the inventor.
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3.43 Disclaimer in patent.
3.44 Interference; preliminary statement of domestic inventor.
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3.46 Interference; disclaimer during interference.
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3.48 Interference; form of deposition.
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3.50 Waiver of patent rights.
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3.53 Terminal disclaimer in application.
3.54 Division-continuation program application transmittal form.
3.55 A suggested format for the certificate under 37 CFR 1.8(a) to be included with the correspondence.
3.56 Oath to be filed with United States Designated Office under 35 U.S.C. 371(c)(4).
3.57 Declaration to be filed with United States Designated Office under 35 U.S.C. 371(c)(4).
3.61 Symbols for draftsmen.

AUTHORITY: 35 U.S.C. 6, unless otherwise noted.

Source: 42 FR 27883, June 1, 1977, unless otherwise noted.

NOTE: The following forms illustrate the manner of preparing various papers to be filed in the Patent and Trademark Office. Applicants and other parties will find their business facilitated by following them. In special situations such alterations as the circumstances may render necessary may be made provided they do not depart from the requirements of Part 1 of this chapter or of the statute. Before using any form the pertinent sections of Part 1 and sections of the statute should be studied carefully.

§ 3.1 [Reserved]

§ 3.11 Oath to accompany application for patent.

As a below named inventor, being duly sworn (or affirmed), I depose and say that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: ————— described and claimed in the attached specification; that

I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows: —————.

Full name of sole or first Inventor ———

———————————

Inventor's signature —————
Date: —————.
Residence —————
Citizenship —————
Post Office Address —————

———————————

Full name of second joint Inventor, if any —

————————————————————
Inventor's signature ——————————————
Date: ——————————.
Residence ————————————————————
Citizenship ——————————————————
Post Office Address ———————————————

————————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

——————————,
——————————, ss:

Sworn to and subscribed before me this —— day of ——————————, 19——.

[SEAL]

——————————————.
(Signature of notary or officer)

——————————————.
(Official character)

§ 3.11a Declaration to accompany application for patent.

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are name below) of the invention entitled: —————————— described and claimed in the attached specification; that

I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows: ——————————.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first Inventor ——————

————————————————————
Inventor's signature ——————————————
Date: ——————————.
Residence ————————————————————
Citizenship ——————————————————
Post Office Address ———————————————

————————————————————

Full name of second joint Inventor, if any

————————————————————
Inventor's signature ——————————————
Date: ——————————.
Residence ————————————————————
Citizenship ——————————————————
Post Office Address ———————————————

————————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

§ 3.12 Oath to accompany application for patent, by an administrator (or executor).

I (A) ——————————————, being duly sworn (or affirmed), depose and say that I am a citizen of ——————————, and a resident of ——————————, that I am the administrator of the estate (or executor of the last will and testament) of (B) ——————————, deceased, late a citizen of ——————————, and a resident of ——————————, that I verily believe the said (B) —————————— to be the original, first and sole inventor of the improvement in —————————— described and claimed in the foregoing specification; that I do not know and do not believe that the same was ever known or used in the United States of America before the invention thereof by the said (B) ——————————, or patented or described in any printed publication in any country before the said invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application; that said invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by the said (B) —————————— or his or her legal representatives or assigns more than twelve months prior to this application; that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on said invention has been filed by the said (B) ————— or his or her representatives or assigns in any country foreign to the United States of America, except as follows: —————.

(A) —————.
(Signature)
Administrator, etc.

—————,
—————, ss:

Sworn to and subscribed before me this —— day of —————, 19——.

[SEAL]

—————————.
(Signature of notary or officer)
—————————.
(Official character)

NOTE: (A) Name of administrator or executor; (B) Name of deceased inventor.

§ 3.12a Declaration to accompany application for patent, by an administrator (or executor).

I, (A) —————, hereby declare that I am a citizen of ——————— and a resident of —————, that I am the administrator of the estate (or executor of the last will and testament) of (B) —————, deceased, late a citizen of ————— and resident of —————, that I verily believe the said (B) ————— to be the original, first and sole inventor of the improvement in ————— described and claimed in the foregoing specification; that I do not know and do not believe that the same was ever known or used in the United States of America before the invention thereof by the said (B) —————, or patented or described in any printed publication in any country before the said invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application; that said invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by the said (B) —————, or his or her legal representatives or assigns more than twelve months prior to this application; that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on said invention has been filed by the said (B) —————, or his or her representatives or assigns in any country foreign to the United States of America, except as follows: —————.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

(A) —————.
(Signature)

Date: —————.

NOTE: (A) Name of administrator or executor; (B) Name of deceased inventor.

§ 3.13 Oath not accompanying application.

As a below named inventor, being duly sworn (or affirmed), I depose and say that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: ————— described and claimed in the specification of application Serial No. —————, filed —————; that I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows: —————.

Full name of sole or first Inventor ———
———————————————
Inventor's signature ———————————
Date: —— ———.
Residence ———————————
Citizenship ———————————
Post Office Address ———————————

————————————————————
Full name of second joint Inventor, if any

————————————————————
Inventor's signature ————————————
Date: ——————.
Residence ————————————————
Citizenship ———————————————
Post Office Address ———————————

————————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

————————,
————————, ss:

Sworn to and subscribed before me this —— day of ——————, 19 ——.
[SEAL]

————————————.
(Signature of notary or officer)
————————————.
(Official character)

§ 3.13a Declaration not accompanying application.

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: —————— described and claimed in the specification of application Serial No. ——————, filed ——————; that I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows: ——————.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first Inventor ————

————————————————————
Inventor's signature ————————————
Date: ——————.
Residence ————————————————
Citizenship ———————————————
Post Office Address ———————————

————————————————————
Full name of second joint inventor, if any —

————————————————————

————————————————————
Date: ——————.
Inventor's signature ————————————
Residence ————————————————
Citizenship ———————————————
Post Office Address ———————————

————————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

§ 3.14 Supplemental oath for amendment presenting claims for matter disclosed but not originally claimed.

I, —————— (name), as the inventor named in the application for letters patent for an improvement in ——————, Serial No. ——————, filed in the United States Patent and Trademark Office on or about the —— day of ——————, 19 ——, being duly sworn (or affirmed) depose and say that the subject matter of the foregoing (1) amendment was part of my invention, was invented before the filing of the original application, above identified, for such invention; that I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof, or more than one year before said application, or in public use or on sale in the United States of America more than one year before the date of said application, that said invention has not been patented or made the subject of an inventor's certificate issued before the date of said application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said application in the United States of America, and has not been abandoned.

——————————.
(Signature)

———————————,
———————————, ss:

Sworn to and subscribed before me this —— day of ———————, 19 ——.
[SEAL]

————————————————.
(Signature of notary or officer)

————————————————.
(Official character)

NOTE: (1) If the supplemental oath does not accompany the amendment, the amendment should be identified. See § 1.67.

§ 3.14a Supplemental declaration for amendment presenting claims for matter disclosed but not originally claimed.

I, —————————— (name), the inventor named in the application for letters patent for an improvement in ——————————, Serial No. ——————————, filed in the United States Patent and Trademark Office on or about the —— day of ———————, 19 ——, declare that the subject matter of the foregoing (1) amendment was part of my invention, was invented before the filing of the original application, above identified, for such invention; that I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof, or more than one year before said application, or in public use or on sale in the United States of America more than one year before the date of said application, that said invention has not been patented or made the subject of an inventor's certificate issued before the date of said application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said application in the United States of America, and has not been abandoned.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature ——————————.
Date: ——————————.

NOTE: (1) If the supplemental declaration does not accompany the amendment, the amendment should be identified. See § 1.67.

§ 3.16 Combined oath and power of attorney in original application.

As a below named inventor, being duly sworn (or affirmed), I depose and say that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: —————————— described and claimed in the attached specification; that

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representative or assigns more than twelve months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns except as follows: ——————————.

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: ——————————. Address all telephone calls to —————————— at telephone No. ——————————.

Address all correspondence to ———————.

Full name of sole or first inventor ——————

————————————————————————————

Inventor's signature ————————————————
Date: ——————————.
Residence ————————————————————
Citizenship ———————————————————
Post Office Address ————————————————

————————————————————————————

Full name of second joint inventor, if any —

———————————————————

Inventor's signature ——————————

Date: ——————.

Residence ———————————————

Citizenship ——————————————

Post Office Address ——————————

———————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

——————,

——————, ss:

Sworn to and subscribed before me this —— day of ————, 19——.

[SEAL]

——————————.

(Signature of notary or officer)

——————————.

(Official character)

§ 3.16a Combined declaration and power of attorney in original application.

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: —————— described and claimed in the attached specification; that

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application and any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows: ——————.

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: ——————. Address all telephone calls to —————— at telephone No. ——————.

Address all correspondence to ————.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first Inventor ————

———————————————————

Inventor's signature ——————————

Date: ——————.

Residence ———————————————

Citizenship ——————————————

Post Office Address ——————————

———————————————————

Full name of second joint Inventor, if any —

———————————————————

Inventor's signature ——————————

Date: ——————.

Residence ———————————————

Citizenship ——————————————

Post Office Address ——————————

———————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

§ 3.17 Oath in division or continuation application.

[This form of oath may be used with an application disclosing and claiming only subject matter disclosed in a prior copending application of the same inventor.]

As a below named inventor, being duly sworn (or affirmed), I depose and say that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: —————— described and claimed in the attached specification; that this application discloses and claims only subject matter disclosed in my or our prior pending application Serial No. —————— filed ——————; that

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said prior application, that the same was not in public use or on sale in the United States of America more than one year prior to said prior application, that said invention has not been patented or made the subject of an inventor's certificate issued before the date of said prior application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said prior application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on said invention has been filed in any country foreign to the United States of America by me or my legal representatives or assigns, except as follows: ——————.

——————————————————

Full name of sole or first Inventor ————

——————————————————

Inventor's signature ——————————
Date: ——————.
Residence ———————————————
Citizenship ——————————————
Post Office Address ——————————
Full name of second joint Inventor, if any —

——————————————————

Inventor's signature ——————————
Date: ——————.
Residence ———————————————
Citizenship ——————————————
Post Office Address ——————————

——————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

———————,
———————, ss:

Sworn to and subscribed before me this —— day of —————, 19——.

[SEAL]

——————————.
(Signature of notary or officer)
——————————.
(Official character)

§ 3.17a Declaration in division or continuation application.

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: —————— described and claimed in the attached specification; that this application discloses and claims only subject matter disclosed in my or our pending application Serial No. ——————, filed ——————; that

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said prior application, that the same was not in public use or on sale in the United States of America more than one year prior to said prior application, that said invention has not been patented or made the subject of an inventor's certificate issued before the date of said prior application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on said invention has been filed in any country foreign to the United States of America by me or my legal representatives or assigns, except as follows: ——————.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first Inventor ————

——————————————————

Inventor's signature ——————————
Date: ——————.
Residence ———————————————
Citizenship ——————————————
Post Office Address ——————————

——————————————————

Full name of second joint Inventor, if any —

——————————————————

Inventor's signature ——————————
Date: ——————.
Residence ———————————————
Citizenship ——————————————
Post Office Address ——————————

——————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

§ 3.18 Oath in copending application containing additional subject matter.

[This form of oath may be used with an application disclosing and claiming subject matter disclosed in a prior copending application of the same inventor and also disclosing additional subject matter.]

I, —————— (name of inventor), being sworn (or affirmed), depose and say that I am a citizen of —————— and resident of ——————, that I verily believe that I am the original, first and sole inventor of the improvement in —————— described and claimed in the foregoing specification; that this application in part discloses and claims subject matter disclosed in my earlier filed pending application, Serial No. —————— filed ——————; that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, that, as to the subject matter of this application which is common to said earlier application I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof or patented or described in any printed publication in any country before my invention thereof or more than one year prior to said earlier application, or in public use or on sale in the United States of America more than one year prior to said earlier application; that said common subject has not been patented or made the subject of an inventor's certificate issued before the date of said earlier application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said earlier application; and that no application for patent or inventor's certificate on said invention has been filed by me or my representatives or assigns in any country foreign to the United States of America, except as follows: ——————; that as to the subject matter of this application which is not common to said earlier application, I do not know and do not believe that the sdame was ever known or used in the United States of America before my invention thereof or pateneted or described in any printed publication in any country before my invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States of America more than one year prior to the date of this application, and that said subject matter has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application; and that no application for patent or inventor's certificate on said invention has been filed by me or my representatives or assigns in any country foreign to the United States of America except as follows: ——————.

Inventor's full name: ——————

——————.

(Signature)

——————,

——————, ss:

Sworn to and subscribed before me this —— day of ——————, 19——.

[SEAL]

——————.

(Signature of notary or officer)

——————.

(Official character)

§ 3.18a Declaration in copending application containing additional subject matter.

(Sections 1.65 and 1.68 provide for a declaration in lieu or in place of an oath in certain instances.)

(This form of declaration may be used with an application disclosing and claiming subject matter disclosed in a prior copending application of the same inventor and also disclosing additional subject matter.)

I, —————— (name of inventor), declare that I am a citizen of —————— and resident of ——————, that I verily believe that I am the original, first and sole inventor of the improvement in —————— described and claimed in the foregoing specification; that this application in part discloses and claims subject matter disclosed in my earlier filed pending application, Serial No. ——————, filed ——————; that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, that, as to the subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof or patented or described in any printed publication in any country before my invention thereof or more than one year prior to said earlier application, or in public use or on sale in the United States of America more than one year prior to said earlier application; that said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of said earlier application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said earlier application; and that no application for patent or inventor's certificate on said invention has been filed by me or my representatives or assigns in any country foreign to the United States of

America, except as follows ——————; that, as to the subject matter of this application which is not common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof or patented or described in any printed publication in any country before my invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States of America more than one year prior to the date of this application, and that said subject matter has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application; and that no application for patent or inventor's certificate on said invention has been filed by me or my representatives or assigns in any country foreign to the United States of America, except as follows: ——————.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon. Inventor's full name or names ——————.

——————.
(Signature)

Date: ——————.

§ 3.22 Design patent application; specification.

Be it known that I, ——————, have invented a new, original, and ornamental design for (1) ——————, of which the following is a specification, reference being had to the accompanying drawing, forming a part hereof.

Fig. 1 is a (2)——————

Fig. 2 is (2)——————

I claim:

The ornamental design for a (1) —————— as shown.

——————.
(Signature)

NOTES: (1) Insert specific name of article.

(2) Insert brief description of figure or figures of the drawing.

[24 FR 10373, Dec. 22, 1959]

§ 3.23 Design patent application; oath.

As a below named inventor, being duly sworn (or affirmed), I depose and say that my residence, post office address and citizenship are as stated below next to my name; that I believe I am the original, first and sole inventor (if only one name is listed below), or a joint inventor (if plural inventors are named below) of the design entitled: —————— which is described and claimed in the attached specification, that I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application, that said design has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than six months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this design has been filed by me or my legal representatives or assigns in any country foreign to the United States of America except as follows: ——————.

Full name of sole or first Inventor ——————

——————————————————

Inventor's signature ——————————

Date: ——————.

Residence ——————————

Citizenship ——————————

Post Office Address ——————————

——————————————————

Full name of second joint Inventor, if any —

——————————————————

Inventor's signature ——————————

Date: ——————.

Residence ——————————

Citizenship ——————————

Post Office Address ——————————

——————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

——————,

——————, ss:

Sworn to and subscribed before me this —— day of ——————, 19——.

[SEAL]

——————————.
(Signature of notary or officer)

——————————.
(Official character)

§ 3.23a Design patent application; declaration.

As a below named inventor, I declare that: My residence, post office address and citizenship are as stated below next to my name; that I believe I am the original, first and sole inventor (if only one name is listed below), or a joint inventor (if plural inventors are named below) of the design entitled: —————— which is described and claimed in the attached specification, that I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application, that said design has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than six months prior to this application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this design has been filed by me or my legal representatives or assigns in any country foreign to the United States of America except as follows: ——————.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Full name of sole or first Inventor ————

————————————————————

Inventor's signature ——————————
Date: ——————.
Residence ——————————————
Citizenship ——————————————
Post Office Address ——————————

————————————————————

Full name of second joint Inventor, if any —

————————————————————

Inventor's signature ——————————
Date: ——————.
Residence ——————————————
Citizenship ——————————————
Post Office Address ——————————

————————————————————

(Supply similar information and signature for third and subsequent joint inventors.)

§ 3.26 Plant patent application; oath.

I, ——————, being sworn (or affirmed) depose and say that I am a citizen of —————— and resident of ——————, that I verily believe myself to be the original, first and sole inventor of the new and distinct variety of —————— described and claimed in the foregoing specification; that I have asexually reproduced the said new and distinct variety; that I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application; that said invention has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application; that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on said new and distinct variety of plant has been filed by me or my representatives or assigns in any country foreign to the United States of America, except as follows: ——————.

Inventor's full name ——————————
Post Office Address ——————————

——————.
(Signature)

——————.
——————, ss:

Sworn to and subscribed before me this —— day of ————, 19——.

[SEAL]

——————————.
(Signature of notary or officer)

——————————.
(Official character)

§ 3.26a Plant patent application; declaration.

I declare that my residence, post office address and citizenship are as stated below next to my name; that I verily believe myself to be the original, first and sole inventor of the new and distinct variety of —————— described and claimed in the foregoing specification; that I have asexually reproduced the said new and distinct variety; that I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application; that said invention has not been patented or made the subject of an inventor's certificate issued in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application; that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on said new and distinct variety of plant has been filed by me or my representatives or assigns in any country foreign to the United States of America, except as follows: ——————.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Full name of inventor ——————
Residence ——————
Citizenship ——————
Post Office Address ——————

——————

——————.
(Signature)

Date: ——————.

§ 3.28 Reissue application by the inventor, offer to surrender.

To the Commissioner of Patents and Trademarks:

The undersigned applicant of the accompanying reissue application for the reissue of letters patent for an improvement in ——————, No. —————— granted to him ——————, 19——, of which he is now sole owner (or of which —————— is now sole owner by assignment, and on whose behalf amd with whose assent the accompanying application is made), hereby offers to surrender said letters patent. Filed herewith is an abstract of title, duly certified (or an order for a title report), as required in such cases.

——————.
(Signature)

[Assent of assignee to reissue]

The undersigned, assignee of the entire (or of an undivided) interest in the abovementioned letters patent, hereby assents to the accompanying application.

——————.
(Signature)

§ 3.29 Reissue application by the assignee, offer to surrender.

To the Commissioner of Patents and Trademarks:

The undersigned applicant of the accompanying reissue application for the reissue of letters patent for an improvement in ——————, No. ——————, granted —————— 19——, to ——————, now deceased, of which he is now owner by assignment of the entire interest, hereby offers to surrender said letters patent. Filed herewith is an abstract of title (or an order for a title report).

——————.
(Signature)

NOTE: To be used when the inventor is dead; may also be used with appropriate changes when the reissue application does not seek to enlarge the claims of the original patent.

§ 3.31 Reissue application, oath; by the inventor.

I, ——————, being duly sworn (or affirmed) depose and say that I am a citizen of ——————, and a resident of ——————; that I verily believe myself to be the original, first and sole inventor of the invention described and claimed in letters patent No. —————— and in the foregoing specification and for which invention I solicit a reissue patent; that I do not know and do not believe that said invention was ever known or used in the United States of America before my invention thereof, that (continue with the statements under paragraphs 5 and 6 of § 1.175(a), and at least an allegation under one of the appropriate paragraphs 1-4) ——————.

Inventor's full name ——————
Post Office Address ——————

——————.
(Signature)

——————,
——————, ss:

Subscribed and sworn to before me this —— day of ——————, 19——.

[SEAL]

——————————.
(Signature of notary or officer)

——————————.
(Official character)

§ 3.31a Reissue application, declaration; by inventor.

(Sections 1.65 and 1.68 provide for a declaration in lieu or in place of an oath in certain instances.)

I, ——————, declare that I am a citizen of ——————; that I verily believe myself to be the original, first and sole inventor of the invention described and claimed in letters patent No. —————— and in the foregoing specification and for which invention I solicit a reissue patent; that I do not know and do not believe that said invention was ever known or used in the United States of America before my invention thereof, that (continue with the statements under paragraphs 5 and 6 of § 1.175(a), and at least an allegation under one of the appropriate paragraphs 1-4).

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Full name of sole inventor (include at least one given name) ——————————
Post Office Address ——————————

——————.
(Signature)

Date: ————————.

§ 3.32 Reissue application, oath; by assignee.

I, ————— (name of company officer), ————— (title), of ————— (name of company), being duly sworn (or affirmed), depose and say that I am a citizen of —————— and resident of ——————, that the entire title to letters patent No. —————— for ——————, granted on —————— to —————— (name of inventor), is vested in —————— (name of company), that I verily believe said —————— (inventor), to be the original, first and sole inventor of the invention described and claimed in the aforesaid letters patent and in the foregoing specification and for which invention I solicit a reissue patent; that I do not know and do not believe that said invention was ever known or used in the United States of America before the invention thereof by said —————— (name of inventor); that (continue with the statements under paragraphs 5 and 6 of § 1.175(a), and at least an allegation under one of the appropriate paragraph 1-4.)

Assignee's full name————— —————
Name of officer of assignee ——————
Post Office Address ——————————

——————.
(Signature)

——————,
——————, ss:

Sworn to and subscribed before me this —— day of —————, 19——.

[SEAL]

——————————.
(Signature of notary or officer)

——————————.
(Official character)

NOTE: May be used only when the reissue application does not seek to enlarge the claims of the original patent.

§ 3.32a Reissue application, declaration; by assignee.

I, ————— (name of company officer), ————— (title), of ————— (name of company), declare that I am a citizen of —————— and resident of ——————, that the entire title to letters patent No. —————— for ——————, granted on —————— to —————— (name of inventor), is vested in —————— (name of company), that I verily believe said —————— (inventor), to be the original, first and sole inventor of the invention described and claimed in the aforesaid letters patent and in the foregoing specification and for which invention I solicit a reissue patent; that I do not know and do not believe that said invention was ever known or used in the United States of America before the invention thereof by said —————— (name of inventor); that (continue with the statements under paragraphs 5 and 6 of § 1.175(a), and at least an allegation under one of the appropriate paragraphs 1-4.)

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Assignee's full name——————————
Name of officer of assignee ——————
Post Office Address ——————————

——————.
(Signature)

Date: ——————.

§ 3.33 Oath as to loss of letters patent.

I, —————— (inventor or assignee), being duly sworn (or affirmed), depose and say that letters patent No. —————— granted to —————— on ——————, 19——, has been either lost or destroyed, that I have made a diligent search for said patent in all places where the same would probably be found, if existing, and that I have not been able to find it.

——————.
(Signature)

——————,
——————, ss:

Subscribed and sworn to before me this —— day of ——————, 19——.

[SEAL]

——————————.
(Signature of notary or officer)

——————————.
(Official character)

§ 3.33a Declaration as to loss of letters patent.

I, —————— (inventor or assignee), hereby declare that letters patent No. —————— granted to —————— on ——————, 19——, has been either lost or destroyed, that I have made a diligent search for said patent in all places where the same would probably be found, if existing, and that I have not been able to find it. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

——————.
(Signature)
Date: ——————.

§ 3.36 Power of attorney or authorization of agent, not accompanying application.

[If the power of attorney or authorization of agent be given at any time other than that of making application for letters patent, it will be in substantially the following form:]

To the Commissioner of Patents and Trademarks

I, the undersigned, having on or about the —— day of ——————, 19——, made application for letters patent for an improvement in ——————————, serial number ——————————, hereby appoint —————— of ——————, State of ——————————, Registration No. —————————— and telephone No. ——————, as my attorney (or agent), to prosecute said application, and to transact all business in the Patent and Trademark Office connected therewith.

——————.
(Signature)
Date: ——————.

§ 3.37 Revocation of power of attorney or authorization of agent.

To the Commissioner of Patents and Trademarks

I, the undersigned, having on or about the —— day of ——————, 19——, appointed ——————, of ——————, State of ——————, as my attorney (or agent) to prosecute an application for letters patent, which application was filed on or about the —— day of ——————, 19——, for an improvement in ——————, serial number ——————, hereby revoke the power of attorney (or authorization of agent) then given.

——————.
(Signature)
Date: ——————.

§ 3.39 Amendment.

Applicant ——————————————
Serial No. ——————————————
Filed ——————————————
For ——————————————
Date ——————————————
Group Art Unit ——————————
Examiner ——————————————

To the Commissioner of Patents and Trademarks

In response to the office letter of ——————, 19——, please amend as follows:

Page ——, line ——, change "——————" to ——————.

Page ————, line ————, after "——————" insert ——————.

Page ——, line ——, to end, cancel.

Cancel claims —————— inclusive.

Rewrite claim —————— as follows ——————.

(See § 1.121(b)).

Add the following claims:

REMARKS

(Here state nature and purpose of the amendments and make all explanations necessary for a response to the rejections and objections of record, etc. See §§ 1.111, 1.115-1.126, 1.135.)

Respectfully,

——————

Applicant

——————

Date

By ——————————

His Attorney (or
Agent) (Include
telephone number)

§ 3.41 Notice of appeal from the Primary Examiner to the Board of Appeals.

In re application of ——————————

——————————————

Serial No. ——————————————
Filed ——————————————
For——————————————
Group Art Unit ——————————
Examiner ——————————————

To the Commissioner of Patents and Trademarks

Sir: Applicant hereby apeals to the Board of Appeals from the decision dated —————— of the Primary Examiner finally rejecting claims ——————.

Appeal Fee $50.00:
[ ] Enclosed.
[ ] Not required (fee paid in prior appeal in this application).
[ ] Charge to Deposit Account No. ——————. (One additional copy of this Notice is enclosed herewith.)

——————

(Signature) (§ 1.191(b))

——————

Date

§ 3.43 Disclaimer in patent.

To the Commissioner of Patents and Trademarks

I, —————— (name of disclaimant), residing at —————— represent that I am (here state the exact interest of the disclaimant; if assignee, set out liber and page, or reel and frame, where assignment is recorded) of United States Patent No. ——————, granted to —————— on the —— day of ——————, 19——, for ——————, and that I have reason to believe that without any deceptive intention, claims of said letters patent are too broad or invalid, and therefore hereby disclaim claim(s) —————— of said patent.

Signed at ——————, State of —————— this —— day of ——————, 19——.

——————.

(Signature)

Name and address of signer ——————

——————————————

——————————————

§ 3.44 Interference; preliminary statement of domestic inventor.

PRELIMINARY STATEMENT ——————————
—————— v. —————— Interference No.
—————————————— ss.

——————————, being duly sworn (or affirmed), deposes and says that he is a party to the above identified interference that he made the invention set forth by the counts of the interference in the United States; that

(1) The first drawing of the invention was made on ——————, 19—. A copy is attached.[1]

(2) The first written description of the invention was made on ——————, 19——. A copy is attached.[1]

(3) The invention was first disclosed to others on ——————, 19——.[1]

(4) The date of the first act or acts susceptible of proof, other than acts of the character specified in (1), (2), and (3) which, if proven, would establish conception of the invention, and a brief description of such act or acts are (e.g. the making of a non-operating model on ——————, 19——).

(5) The invention was actually reduced to practice on ——————, 19——.

(6) Active exercise of reasonable diligence toward reducing the invention to practice began on ——————, 19——.[1]

——————.

(Signature of inventor)

Subscribed and sworn to (or affirmed) before me this —— day of ————, 19——.
[SEAL]

——————————.

(Signature of notary or officer)

——————————.

(Official character)

[34 FR 18859, Nov. 26, 1969]

§ 3.45 Interference; preliminary statement of foreign inventor.

PRELIMINARY STATEMENT OF ——————————
—————— v. —————— Interference No.
——————————————*ss:*

——————————, being duly sworn (or affirmed), deposes and says that he is a party to the above identified interference, that he made the invention set forth by the counts of the interference in ————————; that

---

[1] If there were no act corresponding to this allegation prior to the filing date of the application, it must be so stated. Note, however, date of completion of application drawing and specification, date of disclosure to person preparing the application, and diligence in preparing the application.

Knowledge of such invention was introduced into the United States under the following circumstances: On ——————————, 19——, the said ———————— wrote a letter to ——————————, residing at ——————, State of ————————, describing such invention and soliciting his services in procuring a patent therefor in the United States. This letter, he is informed and believes, was received by the said —————————— on ————————, 19——. Also ————————, 19——, he wrote a letter to the firm of ——————————, of ————————, State of ————————, describing such invention and requesting their assistance in manufacturing and putting it on the market, which letter, he is informed and believes, was received by them on ————————, 19——. (If the invention has not been introduced into the United States otherwise than by the application papers, it should be so stated, and the date at which such papers were received in the United States alleged.)

The serial number and filing date of any prior application in the United States disclosing the invention set forth by the counts of the interference are Serial No. ———, filed ————————.

The filing date, country, and number or any application for the same invention in a foreign country, the filing date of which may be claimed under the second paragraph of 35 U.S.C. 119 are

No. ———, filed ——— in —————

——————————.

(Signature of Inventor)

Subscribed and sworn to (or affirmed) before me this ——— day of —————, 19——.

[SEAL]

——————————.

(Signature of notary public or officer) (1)

——————————.

(Official character)

NOTE: (1) The authority of a foreign notary public must be authenticated by a diplomatic or consular certificate.

When acts were performed in the United States corresponding to the allegations (1) through (6), in the preliminary statement of a domestic inventor (§ 3.44) these acts should be included by appropriate allegations in the preliminary statement of a foreign inventor.

[24 FR 10374, Dec. 22, 1959]

§ 3.46 Interference; disclaimer during interference.

———————— v. ———————— Interference No. —————

In the matter of the above identified interference, under the provisions of and for the purpose set forth in § 1.262, I hereby disclaim the subject matter of all the counts of said interference.

——————————.

(Signature)

Date: ——————————.

I, the undersigned, —————————— (full name of officer), —————————— (title of office), of ——————————, assignee of the entire right, title, and interest in the application of ————————, Serial No. —— filed ————————, hereby assents to the foregoing disclaimer.

[Corporate seal] ————— Company, Inc.

By————————————————

(Signature of officer and nature of office)

Date————————————————

§ 3.47 Interference; notice of taking testimony.

————————— v. ————————— Interference No. —————

——————————————————, 19——

——————————————————————————

(Name of opposing attorney)

——————————————————————————

(Address of opposing attorney)

SIR: You are hereby notified that on ————————, ————————, 19——, at—— o'clock in the forenoon at the office of ————————, ————— Street, —————, ————— I shall proceed to take testimony on behalf of the party ———————— in the above identified interference.

The witnesses to be examined are:

——————————————————————————

(Name of witnesses)

——————————————————————————

——————————————————————————

——————————————————————————

(Residence of witnesses)

——————————————————————————

——————————————————————————

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

——————————————————————————

(Signature of attorney)

Proof of Service

——————————————————————, 19——

I hereby certify that on ————, 19——, I served a copy of the foregoing notice of taking testimony upon ——————————, the attorney for the party ——————————, by mailing a copy thereof to him at his address as set out in the notice.

——————————————————

(Signature of attorney)

(Sec. 1, 66 Stat. 801; 35 U.S.C. 122, 135)

[27 FR 830, Jan. 27, 1962]

§ 3.48 Interference; form of deposition.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

———— v. ———— Interference No. ———

Depositions of witnesses examined on behalf of ————————, pursuant to the annexed notice, at the office of ————, ——— Street, ———, ———, on ———.

————————, 19——

Present: ————, on behalf of ——————— ————, on behalf of ——————— ————, being duly sworn (or affirmed) deposes and says, in answer to interrogatories proposed to him by —————————— counsel for —————————— as follows:

Q. 1. What is your name, age, occupation, and residence?

A. My name is ——————————; I am ——— years of age; I am a manufacturer of ———, and reside at ———, in the State of ——————————

Q. 2, etc. ——————————————

——————————————————

And in answer to cross-interrogatories proposed to him by ————————, counsel for ————, he says:

X Q. 1. ——————————————?

A ——————————————————

——————————————————

(Signature)

[24 FR 10375, Dec. 22, 1959]

§ 3.49 Interference; certificate of officer.

I, ————————, a notary public within and for the county of ———— and State of ———— (or other officer, as the case may be), do hereby certify that the foregoing depositions of ——————— and ——————— were taken on behalf of ————————— in pursuance of the notice hereto annexed, before me, at the office of ————————, ——— Street, in the city of —————, and said county, on the ——— day (or days) of ———, 19———; that said witnesses were by me duly sworn (or affirmed) before the commencement of their testimony; that the testimony of said witnesses was written out by myself (or by ——————— in my presence); that the opposing party, ————————, was present (or absent or represented by counsel) during the taking of said testimony; that said testimony was taken at the aforementioned place and was commenced at ——— o'clock ———, on the ——— of ————, 19———, and was continued pursuant to adjournment on the ———, ———— (etc.) and was concluded on the ——— day of ————, 19———, at ——— o'clock ———; that the depositions were read by, or to, each witness before he signed the same and that each witness signed the same in my presence; that I am not related to or employed by either of the parties, or their attorneys or agents, or interested directly or indirectly, in the matter in controversy, either as counsel, attorney, agent or otherwise. (If any of the foregoing requirements are waived, the certificate shall so state.)

In testimony whereof I have hereunto set my hand and affixed my seal of office at ————, in said county, this ——— day of ————, 19———.

[SEAL]

——————.

(Signature of notary public or officer)

——————.

(Official character)

NOTE: The notary public or other officer will then append to the depositions the notice under which it is taken and will seal up all the evidence, notices, and paper exhibits and direct them to the Commissioner of Patents and Trademarks, placing upon the envelope a certificate in substance as follows:

I hereby certify that the within depositions of —————————— and ——————————, relating to the matter of Interference No. ————, ——————— v. ———————were taken, sealed up, and addressed to the Commissioner of Patents and Trademarks, by me this ——— day of ————, 19———.

[SEAL]

——————.

(Signature of notary public or officer)

——————.

(Official character)

[24 FR 10375, Dec. 22, 1959]

§ 3.50 Waiver of patent rights.

To the Commissioner of Patents and Trademarks:

I, The undersigned having on ————————— filed an application for patent, Serial No. ——— entitled ——————————, hereby waive my right to an enforceable patent based on said application or on any continuing application filed after the expiration of thirty (30) months from the earliest U.S. effective filing date of said application and subject to acceptance by the Commissioner, and requests that an abstract of the disclosure thereof be published in the *Official Gazette*, that the complete application be opened to inspection by the general public upon publication of said abstract, and that the application be considered pending for the purpose of interference; and I further expressly abandon said application, the abandonment to take effect five (5) years after the earliest United States effective filing date of the application unless within that period interference proceedings have been initiated.

——————————.
(Signature)

Date: ——————————.

§ 3.51 Application transmittal letter.

Our Case Docket No. ——————————————

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

THE COMMISSIONER OF PATENTS AND TRADEMARKS,
Washington, D.C. 20231.

SIR: Transmitted herewith for filing is the patent application of Inventor:

For:

Enclosed are also:

[ ] sheets of drawing.

[ ] An assignment of the invention to

——————————————————————————

[ ] A certified copy of a ———————— application.

[ ] Associate Power of Attorney.

CLAIMS AS FILED

For	Number filed	Number extra	Rate	Basic fee $65
Total claims	– 10 =	....	× $2 =	....
Independent Claims	– 1 =	....	× 10 =	....
Total filing				..............,..

[ ] Please charge my Deposit Account No. ——— in the amount of $——— A duplicate copy of this sheet is enclosed.

[ ] The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. ———. A duplicate copy of this sheet is enclosed

[ ] A check in the amount of ——— to cover the filing fee is enclosed.

[34 FR 18859, Nov. 26, 1969]

§ 3.52 Amendment transmittal letter.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Serial No. ————————————————————
Filed ————————————————————————
Group Art Unit ————————————————
Examiner ——————————————————————

For:

The Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Sir: Transmitted herewith is an amendment in the above-identified application.

The fee has been calculated as shown below.

CLAIMS AS AMENDED

(1)	(2)—Claims remaining after amendment	(3)	(4)—Highest number previously paid for	(5)—Present extra	(6)—Rate	(7)—Additional fee
Total claims	(1)	Minus	(2)	....	$2	....
Independent claims	(1)	......do	....	....	10	....
Total additional fee for this amendment.	....	....	....	....	....	....

[1] If the entry in col. 2 is less than the entry in col. 4, write "0" in col. 5.

[2] If the "Highest number previously paid for" in this space is less than 10, write "10" in this space.

1. [ ] No additional fee is required.
2. [ ] A check in the amount of $——— is attached.
3. [ ] Charge $——— to Deposit Account No. ——————————. A duplicate copy of this sheet is enclosed.
4. [ ] Please charge any additional fees or credit overpayment to Deposit Account No. ——————————. A duplicate copy of this sheet is enclosed.

§ 3.53 Terminal disclaimer in application.

In re application of ————————————————

Serial Number ——————————————————
Filed ——————————————————————————
For————————————————————————————
Group Art Unit ——————————————————
Examiner ————————————————————————

To the Commissioner of Patents and Trademarks:

I, —————————— (full name of signer), residing at —————————— in the county of —————————— and State of —————————— represent that I am ————————————————

——————————————

(here state exact interest of the disclaimant and, if an assigneee, set out the liber and page or reel and frame where the assignment is recorded)

—————— of application Serial No. —————, filed on the —— day of —————, 19—— for —————. I hereby disclaim the terminal part of any patent granted on the above-identified application, which would extend beyond the expiration date of Patent No. ————— and hereby agree that any patent so granted on the above-identified application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to United States Patent No. —————, this agreement to run with any patent granted on the above-identified aplication and to be binding upon the grantee, its successor or assigns.

—————
(Date)

—————
(Signature)

§ 3.54 Division-continuation program application transmittal form.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Docket No. ——————

Anticipated Classification of this application:

Class —— Subclass ——

Prior application:

Examiner —————

Art Unit —————

THE COMMISSIONER OF PATENTS AND TRADEMARKS

Washington, D.C. 20231.

SIR: This is a request for filing a [ ] continuation [ ] divisional application, under 37 CFR 1.60, of pending prior application Serial No. —— filed on ———— (date) of

——————————————

(Inventor currently of record in prior application)

for ——————— (title of invention).

1. [ ] Enclosed is a copy of the prior application, including the oath or declaration as originally filed.

I hereby verify that the attached papers are a true copy of prior application Serial No. —— as originally filed on ———— (date), and further that this statement was made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

2. [ ] Prepare a copy of the prior application.

3. [ ] The filing fee is calculated below:

CLAIMS AS FILED IN THE PRIOR APPLICATION, LESS ANY CLAIMS CANCELLED BY AMENDMENT BELOW

For—	No. filed	No. extra	Rate	Fee
Total claims	−10 =	....	×$2 =	....
Independent claims	−1 =	....	×10 =	....
Basic fee (minimum amount required)	....	....	....	$65
Total filing fee				....

4. [ ] The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Account No. ——. A duplicate copy of this sheet is enclosed.

5. [ ] A check in the amount of $—— is enclosed.

6. [ ] Cancel in this application original claims ————— of the prior application before calculating the filing fee. (At least one original independent, claim must be retained for filing purposes.)

7. [ ] Amend the specification by inserting before the first line the sentence:— This is a [ ] continuation, [ ] division, of application serial no. ——, filed ———.

8. [ ] Transfer the drawings from the prior application to this application and abandon said prior application as of the filing date accorded this application. A duplicate copy of this sheet is enclosed for filing in the prior application file. (May only be used if signed by person authorized by § 1.138 and before payment of base issue fee.)

8a. [ ] New formal drawings are enclosed.

8b. [ ] Priority of application serial no. —— filed on ———— in ———— (country), is claimed under 35 U.S.C. 119.

8c. [ ] The certified copy of the priority application has been filed in prior application serial no. ——, ——, filed ———.

9. [ ] The prior application is assigned of record to ——————.

10. [ ] The power of attorney in the prior application is to ——————— (name, registration number, and address).

a. [ ] The power appears in the original papers in the prior application.

b. [ ] Since the power does not appear in the original papers, a copy of the power in the prior application is enclosed.

c. [ ] Address all future communications ———————— (May only be completed by applicant, or attorney or agent of record.)

———————— ————————

(date) (signature)

Address of signer:

————————

————————

[ ] Inventor(s)
[ ] Assignee of complete interest
[ ] Attorney or agent of record
[ ] Filed under § 1.34(a)

§ 3.55 A suggested format for the certificate under 37 CFR 1.8(a) to be included with the correspondence.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on ——— (Date).

————————————————————

Name of applicant, assignee, or Registered Representative

————————————————————

Signature

————————————————————

Date

[41 FR 43721, Oct. 4, 1976]

§ 3.56 Oath to be filed with United States Designated Office under 35 U.S.C. 371(c)(4).

As a below named inventor, being duly sworn (or affirmed), I depose and say that:

My residence, post office address, and citizenship are as stated below next to my name;

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled:

————————————————————

described and claimed in international application No. ——— filed ————, and as amended on ———— (if any), which I have reviewed and for which I solicit a patent;

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to my international application, that the same was not in public use or on sale in the United States of America more than one year prior to my international application, that the intention has not been patented or made the subject of an inventor's certificate issued before the date of my international application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to my international application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns except as follows:

————————————————————

Full name of sole or first inventor ....
Inventor's signature ....
Date
Residence ....
Citizenship ....
Post Office Address ....
Full name of second joint inventor, if any ....
Second Inventor's signature ....
Date
Residence ....
Citizenship ....
Post Office Address ....

(Supply similar information and signature for third and subsequent joint inventors.)

————————
ss:
————————

Sworn to and subscribed before me this ——— day of ————, 19——. ————

....
(Signature of notary or officer)

[Seal]

....
(Official character)

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20469, May 11, 1978]

§ 3.57 Declaration to be filed with United Stated Designated Office under 35 U.S.C. 371(c)(4).

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled:

____

described and claimed in international application No. ——— filed ——— and as amended on ——— (if any), which I have reviewed and for which I solicit a patent;

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to my international application, that the same was not in public use or on sale in the United States of America more than one year prior to my international application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of my international application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to my international application, that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows:

____

____

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

____

Full name of sole or first inventor

____

Inventor's signature

____

Date

Residence ————————————
Citizenship ————————————
Post Office Address ————————

____

____

Full name of second joint inventor, if any

____

Second inventor's signature

____

Date

Residence ————————————
Citizenship ————————————
Post Office Address ————————

____

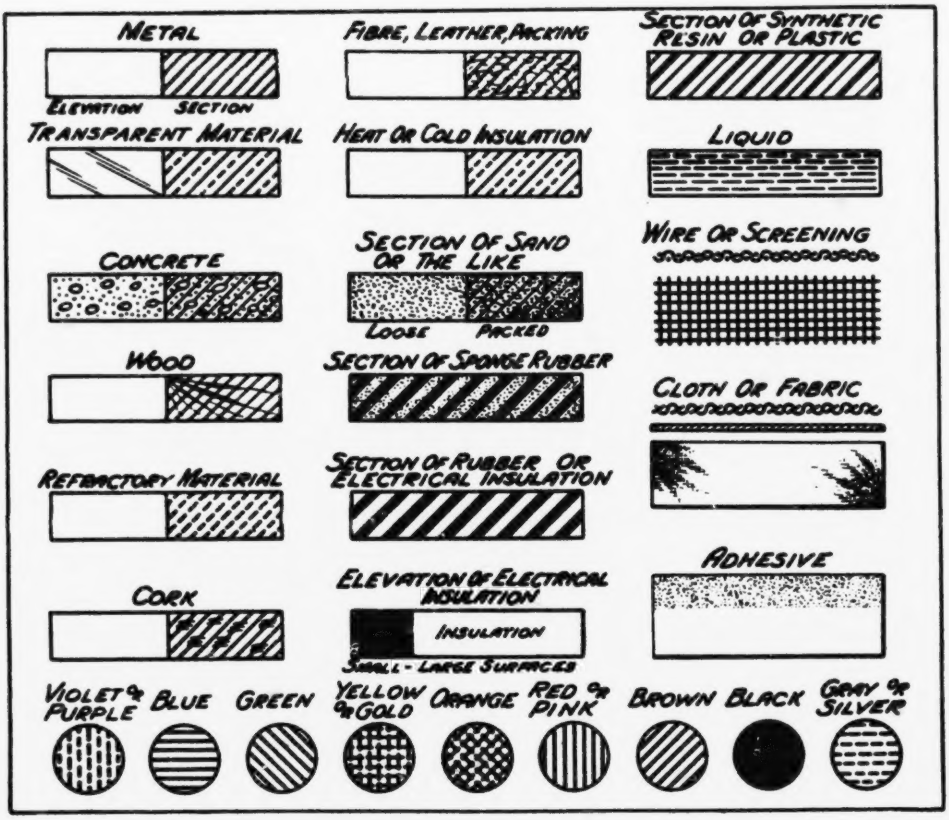
(Supply similar information and signature for third and subsequent joint inventors.)

(Pub. L. 94-131, 89 Stat. 685)

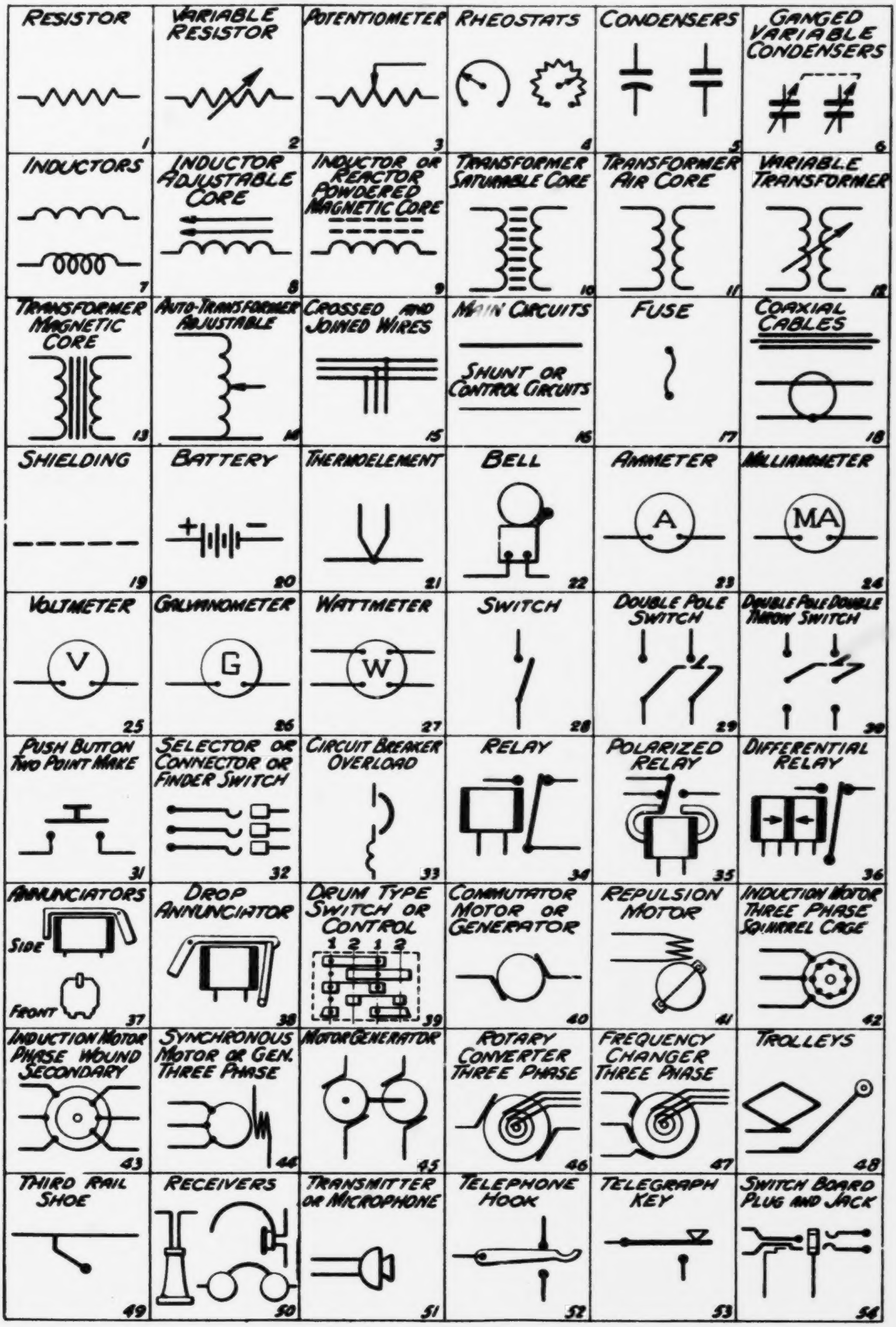
[43 FR 20470, May 11, 1978]

§ 3.61 Symbols for Draftsmen.

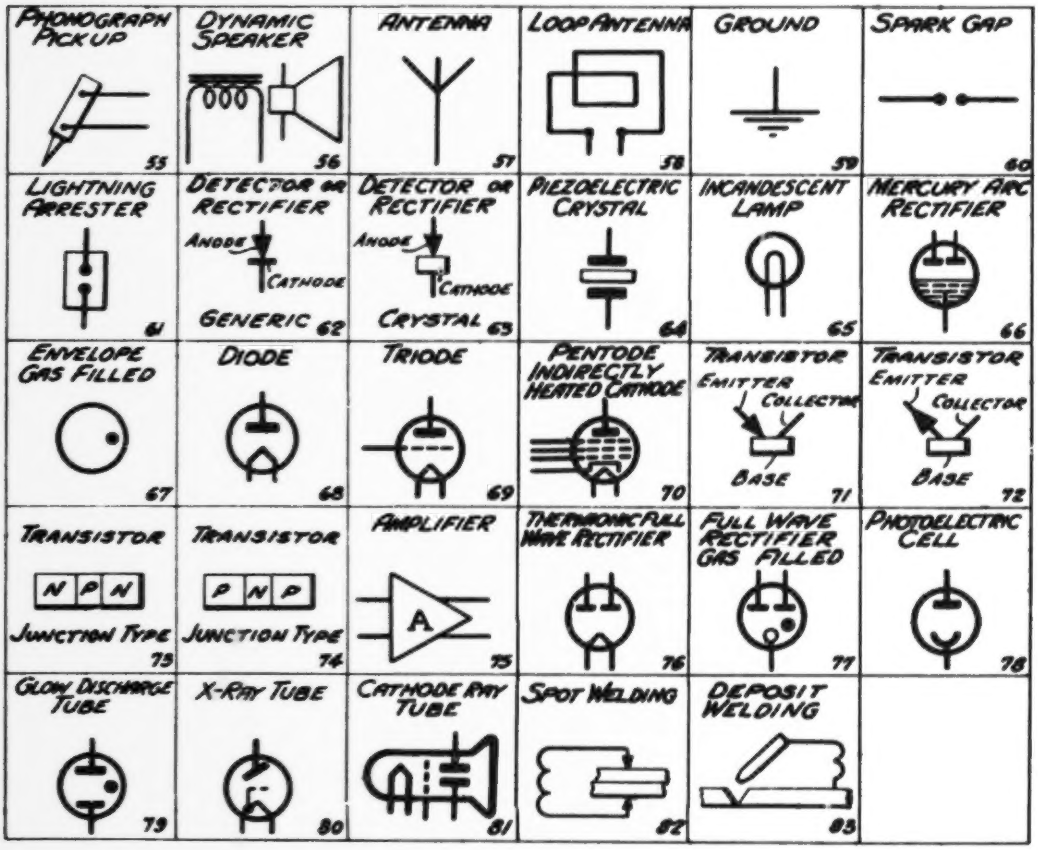
Section 1.84(g) states that graphical symbols for conventional elements may be used on the drawing when appropriate, subject to approval by the Office. The symbols and other conventional devices which follow have been and are approved for such use.


METAL
ELEVATION
SECTION
FIBRE, LEATHER, PACKING
SECTION OF SYNTHETIC RESIN OR PLASTIC
TRANSPARENT MATERIAL
HEAT OR COLD INSULATION
LIQUID
CONCRETE
SECTION OF SAND OR THE LIKE
LOOSE
PACKED
WIRE OR SCREENING
WOOD
SECTION OF SPONGE RUBBER
CLOTH OR FABRIC
REFRACTORY MATERIAL
SECTION OF RUBBER OR ELECTRICAL INSULATION
ADHESIVE
CORK
ELEVATION OF ELECTRICAL INSULATION
INSULATION
SMALL - LARGE SURFACES
VIOLET OR PURPLE
BLUE
GREEN
YELLOW OR GOLD
ORANGE
RED OR PINK
BROWN
BLACK
GRAY OR SILVER

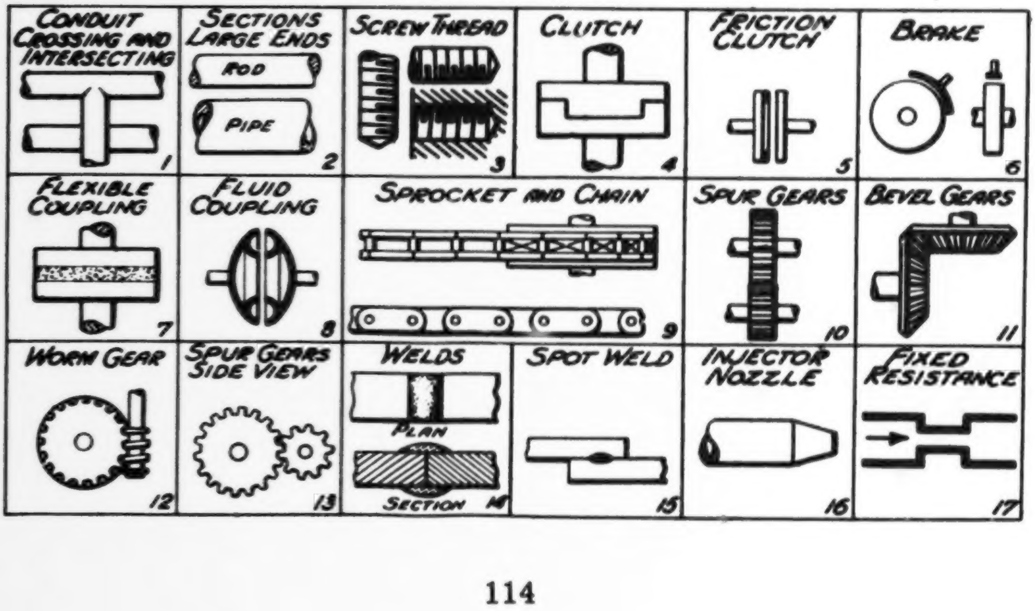
Electrical Symbols


RESISTOR 1
VARIABLE RESISTOR 2
POTENTIOMETER 3
RHEOSTATS 4
CONDENSERS 5
GANGED VARIABLE CONDENSERS 6
INDUCTORS 7
INDUCTOR ADJUSTABLE CORE 8
INDUCTOR OR REACTOR POWDERED MAGNETIC CORE 9
TRANSFORMER SATURABLE CORE 10
TRANSFORMER AIR CORE 11
VARIABLE TRANSFORMER 12
TRANSFORMER MAGNETIC CORE 13
AUTO-TRANSFORMER ADJUSTABLE 14
CROSSED AND JOINED WIRES 15
MAIN CIRCUITS
SHUNT OR CONTROL CIRCUITS 16
FUSE 17
COAXIAL CABLES 18
SHIELDING 19
BATTERY 20
+
−
THERMOELEMENT 21
BELL 22
AMMETER 23
A
MILLIAMMETER 24
MA
VOLTMETER 25
V
GALVANOMETER 26
G
WATTMETER 27
W
SWITCH 28
DOUBLE POLE SWITCH 29
DOUBLE POLE DOUBLE THROW SWITCH 30
PUSH BUTTON TWO POINT MAKE 31
SELECTOR OR CONNECTOR OR FINDER SWITCH 32
CIRCUIT BREAKER OVERLOAD 33
RELAY 34
POLARIZED RELAY 35
DIFFERENTIAL RELAY 36
ANNUNCIATORS
SIDE
FRONT 37
DROP ANNUNCIATOR 38
DRUM TYPE SWITCH OR CONTROL
1 2 1 2 39
COMMUTATOR MOTOR OR GENERATOR 40
REPULSION MOTOR 41
INDUCTION MOTOR THREE PHASE SQUIRREL CAGE 42
INDUCTION MOTOR PHASE WOUND SECONDARY 43
SYNCHRONOUS MOTOR OR GEN. THREE PHASE 44
MOTOR GENERATOR 45
ROTARY CONVERTER THREE PHASE 46
FREQUENCY CHANGER THREE PHASE 47
TROLLEYS 48
THIRD RAIL SHOE 49
RECEIVERS 50
TRANSMITTER OR MICROPHONE 51
TELEPHONE HOOK 52
TELEGRAPH KEY 53
SWITCH BOARD PLUG AND JACK 54

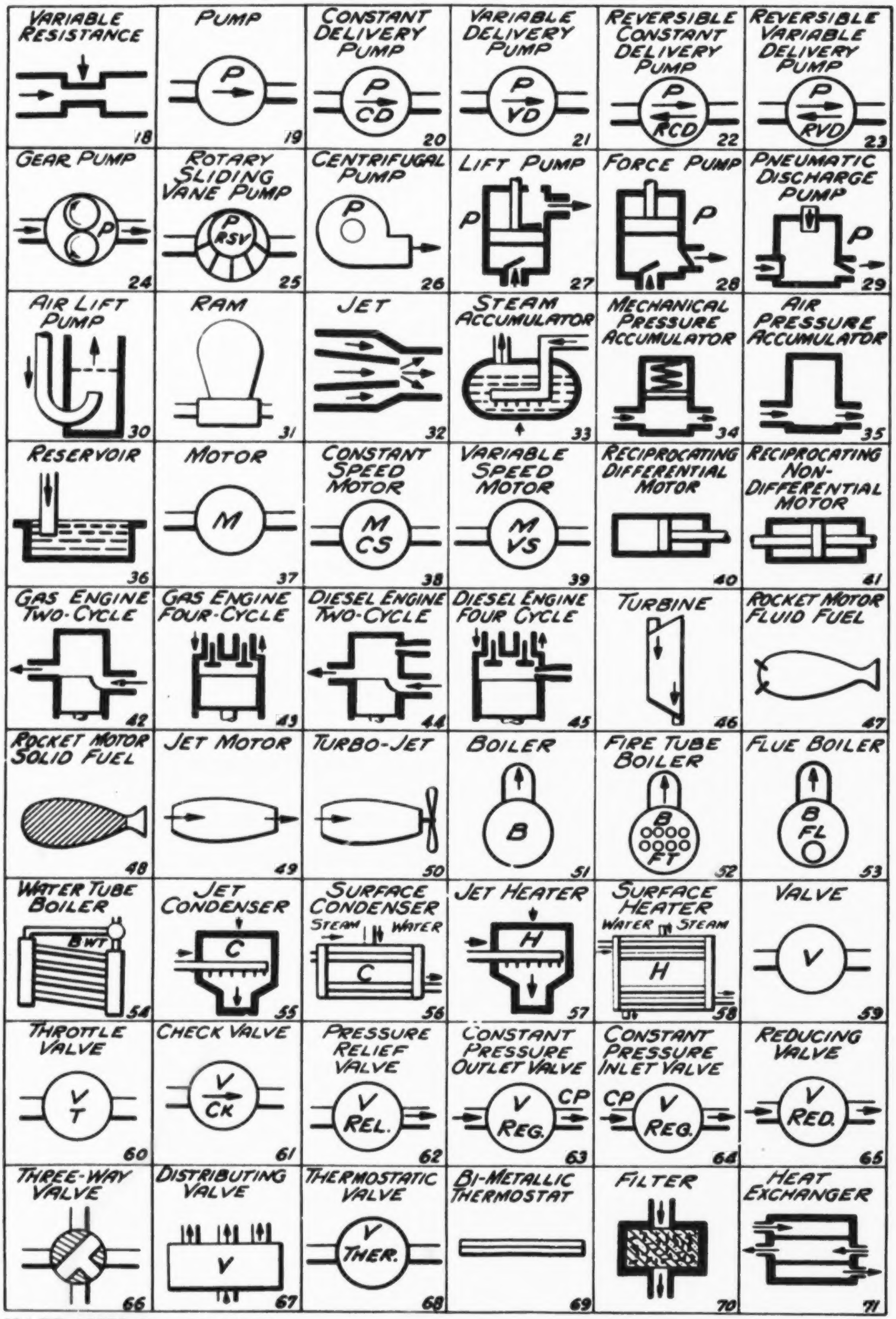
Electrical Symbols – continued


PHONOGRAPH PICKUP 55
DYNAMIC SPEAKER 56
ANTENNA 57
LOOP ANTENNA 58
GROUND 59
SPARK GAP 60
LIGHTNING ARRESTER 61
DETECTOR OR RECTIFIER
ANODE
CATHODE
GENERIC 62
DETECTOR OR RECTIFIER
ANODE
CATHODE
CRYSTAL 63
PIEZOELECTRIC CRYSTAL 64
INCANDESCENT LAMP 65
MERCURY ARC RECTIFIER 66
ENVELOPE GAS FILLED 67
DIODE 68
TRIODE 69
PENTODE INDIRECTLY HEATED CATHODE 70
TRANSISTOR
EMITTER
COLLECTOR
BASE 71
TRANSISTOR
EMITTER
COLLECTOR
BASE 72
TRANSISTOR
N P N
JUNCTION TYPE 73
TRANSISTOR
P N P
JUNCTION TYPE 74
AMPLIFIER
A 75
THERMIONIC FULL WAVE RECTIFIER 76
FULL WAVE RECTIFIER GAS FILLED 77
PHOTOELECTRIC CELL 78
GLOW DISCHARGE TUBE 79
X-RAY TUBE 80
CATHODE RAY TUBE 81
SPOT WELDING 82
DEPOSIT WELDING 83

Mechanical Symbols


CONDUIT CROSSING AND INTERSECTING 1
SECTIONS LARGE ENDS
ROD
PIPE 2
SCREW THREAD 3
CLUTCH 4
FRICTION CLUTCH 5
BRAKE 6
FLEXIBLE COUPLING 7
FLUID COUPLING 8
SPROCKET AND CHAIN 9
SPUR GEARS 10
BEVEL GEARS 11
WORM GEAR 12
SPUR GEARS SIDE VIEW 13
WELDS
PLAN
SECTION 14
SPOT WELD 15
INJECTOR NOZZLE 16
FIXED RESISTANCE 17

Mechanical Symbols – continued


VARIABLE RESISTANCE 18
PUMP P 19
CONSTANT DELIVERY PUMP P CD 20
VARIABLE DELIVERY PUMP P VD 21
REVERSIBLE CONSTANT DELIVERY PUMP P RCD 22
REVERSIBLE VARIABLE DELIVERY PUMP P RVD 23
GEAR PUMP P 24
ROTARY SLIDING VANE PUMP P RSV 25
CENTRIFUGAL PUMP P 26
LIFT PUMP P 27
FORCE PUMP P 28
PNEUMATIC DISCHARGE PUMP P 29
AIR LIFT PUMP 30
RAM 31
JET 32
STEAM ACCUMULATOR 33
MECHANICAL PRESSURE ACCUMULATOR 34
AIR PRESSURE ACCUMULATOR 35
RESERVOIR 36
MOTOR M 37
CONSTANT SPEED MOTOR M CS 38
VARIABLE SPEED MOTOR M VS 39
RECIPROCATING DIFFERENTIAL MOTOR 40
RECIPROCATING NON-DIFFERENTIAL MOTOR 41
GAS ENGINE TWO-CYCLE 42
GAS ENGINE FOUR-CYCLE 43
DIESEL ENGINE TWO-CYCLE 44
DIESEL ENGINE FOUR CYCLE 45
TURBINE 46
ROCKET MOTOR FLUID FUEL 47
ROCKET MOTOR SOLID FUEL 48
JET MOTOR 49
TURBO-JET 50
BOILER B 51
FIRE TUBE BOILER B FT 52
FLUE BOILER B FL 53
WATER TUBE BOILER BWT 54
JET CONDENSER C 55
SURFACE CONDENSER STEAM WATER C 56
JET HEATER H 57
SURFACE HEATER WATER STEAM H 58
VALVE V 59
THROTTLE VALVE V T 60
CHECK VALVE V CK 61
PRESSURE RELIEF VALVE V REL. 62
CONSTANT PRESSURE OUTLET VALVE V REG. CP 63
CONSTANT PRESSURE INLET VALVE CP V REG. 64
REDUCING VALVE V RED. 65
THREE-WAY VALVE 66
DISTRIBUTING VALVE V 67
THERMOSTATIC VALVE V THER. 68
BI-METALLIC THERMOSTAT 69
FILTER 70
HEAT EXCHANGER 71

[24 FR 10375, Dec. 22, 1959]

PART 4—FORMS FOR TRADEMARK CASES

CODIFICATION NOTE: Part 4 is placed in a separate grouping of parts pertaining to trademarks. It appears on page 180 of this volume.

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO FILE APPLICATIONS IN FOREIGN COUNTRIES

SECRECY ORDERS

Sec.

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5.2 Secrecy order.
5.3 Prosecution of application under secrecy orders; withholding patent.
5.4 Petition for rescission of secrecy order.
5.5 Permit to disclose or modification of secrecy order.
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5.12 Petition for license.
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5.17 Who may use license.
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5.19 Export of technical data.

GENERAL

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5.22 Papers in English language.
5.23 Correspondence.

AUTHORITY: 35 U.S.C. 6, 181-187, 188.

SOURCE: 24 FR 10381, Dec. 22, 1959, unless otherwise noted.

SECRECY ORDERS

§ 5.1 Defense inspection of certain applications.

(a) The provisions of this part shall apply to both national and international applications filed in the Patent and Trademark Office and, with respect to inventions made in the United States, to applications filed in any foreign country or any international authority other than the United States Receiving Office. The (1) filing of a national or an international application in a foreign country or with an international authority other than the United States Receiving Office, or (2) transmittal of an international application to a foreign agency or an international authority other than the United States Receiving Office is considered to be a foreign filing within the meaning of Chapter 17 of Title 35, United States Code.

(b) In accordance with the provisions of 35 U.S.C. 181, patent applications containing subject matter the disclosure of which might be detrimental to the national security are made available for inspection by defense agencies as specified in said section. Only applications obviously relating to national security, and applications within fields indicated to the Patent and Trademark Office by the defense agencies as so related, are made available. The inspection will be made only by responsible representatives authorized by the agency to review applications. Such representatives are required to sign a dated acknowledgement of access accepting the condition that information obtained from the inspection will be used for no purpose other than the administration of 35 U.S.C. 181-188. Copies of applications may be made available to such representatives for inspection outside the Patent and Trademark Office under conditions assuring that the confidentiality of the applications will be maintained, including the conditions that: (1) All copies will be returned to the Patent and Trademark Office promptly if no secrecy order is imposed, or upon rescission of such order if one is imposed, and (2) no additional copies will be made by the defense agencies. A record of the removal and return of copies made available for defense inspection will be maintained by the Patent and Trademark Office. Applications relating to atomic energy are made available to the Department of Energy as specified in § 1.14 of this chapter.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20470, May 11, 1978]

§ 5.2 Secrecy order.

(a) When notified by the chief officer of a defense agency that publication or disclosure of the invention by the granting of a patent would be detrimental to the national security, an order that the invention be kept secret will be issued by the Commissioner of Patents and Trademarks.

(b) The secrecy order is directed to the applicant, his successors, any and all assignees, and their legal representatives; hereinafter designated as principals.

(c) A copy of the secrecy order will be forwarded to each principal of record in the application and will be accompanied by a receipt, identifying the particular principal, to be signed and returned.

(d) The secrecy order is directed to the subject matter of the application. Where any other application in which a secrecy order has not been issued discloses a significant part of the subject matter of the application under secrecy order, the other application and the common subject matter should be called to the attention of the Patent and Trademark Office. Such a notice may include any material such as would be urged in a petition to rescind secrecy orders on either of the applications.

§ 5.3 Prosecution of application under secrecy orders; withholding patent.

Unless specifically ordered otherwise, action on the application by the Office and prosecution by the applicant will proceed during the time an application is under secrecy order to the point indicated in this section:

(a) National applications under secrecy order which come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant but unless otherwise specifically ordered by the Commissioner will not be set for hearing until the secrecy order is removed.

(b) An interference will not be declared involving national applications under secrecy order. However, if an applicant whose application under secrecy order copies claims from an issued patent, a notice of that fact will be placed in the file wrapper of the patent. (See § 1.205(c).

(c) When the national application is found to be in condition for allowance except for the secrecy order the applicant and the agency which caused the secrecy order to be issued will be notified. This notice (which is not a notice of allowance under § 1.311 of this chapter) does not require response by the applicant and places the national application in a condition of suspension until the secrecy order is removed. When the secrecy order is removed the Patent and Trademark Office will issue a notice of allowance under § 1.311 of this chapter, or take such other action as may then be warranted.

(d) International applications under secrecy order will not be mailed, delivered or otherwise transmitted to the international authorities or the applicant. International applications under secrecy order will be processed up to the point where, if it were not for the secrecy order, record and search copies would be transmitted to the international authorities or the applicant.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20470, May 11, 1978, as amended at 43 FR 28479, June 30, 1978]

§ 5.4 Petition for rescission of secrecy order.

(a) A petition for rescission or removal of a secrecy order may be filed by, or on behalf of, any principal affected thereby. Such petition may be in letter form, and it must be in duplicate. The petition must be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued.

(b) The petition must recite any and all facts that purport to render the order ineffectual or futile if this is the basis of the petition. When prior publications or patents are alleged the petition must give complete data as to such publications or patents and should be accompanied by copies thereof.

(c) The petition must identify any contract between the Government and any of the principals, under which the subject matter of the application or any significant part thereof was developed, or to which the subject matter is otherwise related. If there is no such contract, the petition must so state.

(d) Unless based upon facts of public record, the petition must be verified.

§ 5.5 Permit to disclose or modification of secrecy order.

(a) Consent to disclosure, or to the filing of an application abroad, as provided in 35 U.S.C. 182, shall be made by a "permit" or "modification" of the secrecy order.

(b) Petitions for a permit or modification must fully recite the reason or purpose for the proposed disclosure. Where any proposed disclosee is known to be cleared by a defense agency to receive classified information, adequate explanation of such clearance should be made in the petition including the name of the agency or department granting the clearance and the date and degree thereof. The petition must be filed in duplicate and be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued.

(c) In a petition for modification of a secrecy order to permit filing abroad, all countries in which it is proposed to file must be made known, as well as all attorneys, agents and others to whom the material will be consigned prior to being lodged in the foreign patent office. The petition should include a statement vouching for the loyalty and integrity of the proposed disclosees and where their clearance status in this or the foreign country is known all details should be given.

(d) Consent to the disclosure of subject matter from one application under secrecy order may be deemed to be consent to the disclosure of common subject matter in other applications under secrecy order so long as not taken out of context in a manner disclosing material beyond the modification granted in the first application.

(e) The permit or modification may contain conditions and limitations.

§ 5.6 General and group permits.

(a) Organizations requiring consent for disclosure of applications under secrecy order to persons or organizations in connection with repeated routine operation may petition for such consent in the form of a general permit. To be successful such petitions must ordinarily recite the security clearance status of the disclosees as sufficient for the highest classification of material that may be involved.

(b) Where identical disclosees and circumstances are involved, and consent is desired for the disclosure of each of a specific list of applications, the petitions may be joined.

§ 5.7 Compensation.

Any request for compensation as provided in 35 U.S.C. 183 must not be made to the Patent and Trademark Office but should be made directly to the department or agency which caused the secrecy order to be issued. Upon written request persons having a right to such information will be informed as to the department or agency which caused the secrecy order to be issued.

§ 5.8 Appeal to Secretary.

Appeal to the Secretary of Commerce, as provided by 35 U.S.C. 181, from a secrecy order cannot be taken until after a petition for rescission of the secrecy order has been made and denied. Appeal must be taken within 60 days from the date of the denial, and the party appealing, as well as the department or agency which caused the order to be issued will be notified of the time and place of hearing. The appeal will be heard and decided by the Secretary or such officer or officers as he may designate.

LICENSES FOR FOREIGN FILING

§ 5.11 License for filing application in foreign country or for transmitting international application.

(a) When no secrecy order has been issued under § 5.2, a license from the Commissioner of Patents and Trademarks under 35 U.S.C. 184 is required before filing any application for patent or for the registration of a utility model, industrial design, or model, in a foreign country, or transmitting an international application to any foreign patent agency or any international agency other than the United States Receiving Office, or causing or authorizing such filing or transmittal, with respect to an invention made in the United States, if:

(1) The foreign application is to be filed or its filing caused or authorized before a national or international application for patent is filed in the United States, or

(2) The foreign application is to be filed, or its filing caused or authorized, or the transmittal of the international application is caused or authorized, prior to the expiration of six months from the filing of the application in the United States.

(b) When there is no secrecy order in effect, a license under 35 U.S.C. 184 is not required if:

(1) The invention was not made in the United States, or

(2) The foreign application is to be filed or the international application is to be transmitted, or its filing or transmittal caused or authorized, after the expiration of six months from the filing of the national application in the United States.

(c) When a secrecy order has been issued under § 5.2, an application cannot be filed in a foreign country, nor can an international application be transmitted to any agency other than the United States Receiving Office except in accordance with § 5.5.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20471, May 11, 1978]

§ 5.12 Petition for license.

Petitions for license under 35 U.S.C. 184 may be presented in letter form and should include petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner.

§ 5.13 Petition for license; no corresponding application.

Where there is no corresponding national or international application, the petition for license must be accompanied by a legible copy of the material upon which license is desired. This copy will be retained as a measure of the license granted. For assistance in the identification of the subject matter of each license so issued, it is suggested that the petition or requesting letter be submitted in duplicate and provide a title and other description of the material. The duplicate copy of the petition will be returned with the license or other action on the petition. Where an international application is being filed in the United States Receiving Office, the petition may accompany the international application.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20471, May 11, 1978]

§ 5.14 Petition for license; corresponding U.S. application.

(a) Where there is a corresponding United States application on file the petition for license must identify this application by serial number, filing date, inventor, and title, and a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application. Where the title is not descriptive, and the subject matter is clearly of no interest from a security standpoint, time may be saved by a short statement in the petition as to the nature of the invention.

(b) Two or more United States applications should not be referred to in the same petition for license unless they are to be combined in the foreign or international application, in which event the petition should so state and the identification of each United States application should be in separate paragraphs.

(c) Where the application to be filed or transmitted abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be filed in the foreign country or international application which is to be transmitted to a foreign international or national agency as it is to be filed in the Receiving Office must be furnished with the petition. If, however, all new matter in the foreign or international application to be filed is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

(Pub. L. 94-131, 89 Stat. 685)

[24 FR 10381, Dec. 22, 1959, as amended at 43 FR 20471, May 11, 1978]

§ 5.15 Scope of license.

(a) A license to file an application in a foreign country or transmit an international application to any foreign or international agency other than the United States Receiving Office, when granted, includes authority to forward all duplicate and formal papers to the foreign country or international agencies and to make amendments and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved. In those cases in which no license is required to file the foreign application or transmit the international application, no license is required to file papers in connection with the prosecution of the foreign or international application not involving the disclosure of additional subject matter. Any paper filed abroad or with an international agency following the filing of a foreign or international application which involves the disclosure of additional subject matter must be separately licensed in the same manner as a foreign or international application.

(b) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided additional subject matter is not introduced.

(c) A license does not apply to acts done before the license was granted unless the petition specifically requests and describes the particular acts and the license is worded to apply to such acts.

(Pub. L. 94-131, 89 Stat. 685)

[24 FR 10381, Dec. 22, 1959, as amended at 43 FR 20471, May 11, 1978]

§ 5.16 Effect of secrecy order.

Any license obtained under 35 U.S.C. 184 is ineffective if the subject matter is under a secrecy order, and a secrecy order prohibits the exercise of or any further action under the license unless separately specifically authorized by a modification of the secrecy order in accordance with § 5.5.

§ 5.17 Who may use license.

Licenses may be used by anyone interested in the foreign filing or international transmittal for or on behalf of the inventor or the inventor's assigns.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20471, May 11, 1978]

§ 5.18 Arms, ammunition, and implements of war.

(a) The exportation of technical data relating to arms, ammunition, and implements of war generally is subject to the International Traffic in Arms Regulations of the Department of State (22 CFR Parts 121-128); the articles designated as arms, ammunition, and implements of war are enumerated in the U.S. Munitions List, 22 CFR 121.01. However, if a patent applicant complies with regulations issued by the Commissioner of Patents and Trademarks under 35 U.S.C. 184, no separate approval from the Department of State is required unless the applicant seeks to export technical data exceeding that used to support a patent application in a foreign country. This exemption from Department of State regulations is applicable regardless of whether a license from the Commissioner is required by the provisions of §§ 5.11 and 5.15 (22 CFR 125.04(b), 125.20(b)).

(b) When a patent application containing subject matter on the Munitions List (22 CFR 121.01) is subject to a secrecy order under § 5.2 and a petition is made under § 5.5 for a modification of the secrecy order to permit filing abroad, a separate request to the Department of State for authority to export classified information is not required (22 CFR 125.05(d)).

[35 FR 6430, Apr. 22, 1970]

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 370.10(j)) established by the U.S. Department of Commerce, International Trade Administration, Office of Export Administration, a validated export license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (37 CFR 5.11-5.23) of the Patent and Trademark Office.

(b) A validated export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 379.3(c)).

(c) Inquiries concerning the export control regulations for the foreign filing of technical data other than patent applications should be made to the Office of Export Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230.

[45 FR 72654, Nov. 3, 1980]

GENERAL

§ 5.21 Effect of modification, rescission or license.

Any consent, rescission or license under the provisions of this part does not lessen the responsibilities of the principals in respect to any Government contract or the requirements of any other Government agency.

§ 5.22 Papers in English language.

All papers submitted in connection with petitions must be in the English language, or be accompanied by an English translation and a translator's certificate as to the true, faithful and exact character of the translation.

§ 5.23 Correspondence.

All correspondence in connection with this part, including petitions, should be addressed to "Commissioner of Patents and Trademarks (Attention Patent Security Division), Washington, D.C. 20231."

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

CODIFICATION NOTE: Part 6 is placed in a separate grouping of parts pertaining to trademarks. It appears on page 191 of this volume.

PART 7—REGISTER OF GOVERNMENT INTERESTS IN PATENTS

Sec.
7.1 Requirements.
7.2 Assignments.
7.3 Licenses.
7.4 Abbreviated copy.
7.5 Instruments already on record.
7.6 Access to register.
7.7 Secret register.

AUTHORITY: E.O. 9424, Feb. 18, 1944, 9 FR 1959; 3 CFR 1943-1948 Comp.

SOURCE: 24 FR 10383, Dec. 22, 1959, unless otherwise noted.

§ 7.1 Requirements.

Executive Order 9424 (3 CFR 1943-1948 Comp.) requires the several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, to forward promptly to the Commissioner of Patents and Trademarks for recording all licenses, assignments, or other interests of the Government in or under patents or applications for patents.

§ 7.2 Assignments.

The original of an assignment or other instrument which conveys to the Government only the title to a patent or to an application for patent shall be forwarded to the Commissioner of Patents and Trademarks. The instrument will be recorded, endorsed, and returned.

§ 7.3 Licenses.

A copy of any license or instrument other than an assignment which conveys to or gives the Government any interest in or under a patent or an application for patent shall be forwarded for recording. The copy will be retained by the Patent and Trademark Office but, when desired, the original will be endorsed and returned.

§ 7.4 Abbreviated copy.

If an instrument deals with matters in addition to rights and interests in patents or in applications for patents, or in inventions disclosed therein, a copy of only those portions of the instrument dealing with such rights and interests need be forwarded. In such case, a statement giving the general nature of the entire instrument, the parties involved, the date of the instrument, the place where it is usually filed, and any docket or identifying number, must be attached to the copy.

§ 7.5 Instruments already on record.

Instruments which have been recorded prior to the adoption of §§ 7.1 to 7.7 and are on the general assignment records of the Patent and Trademark Office need not be forwarded again for recording.

§ 7.6 Access to register.

The register will not be open to public inspection. It will be available for examination and inspection by duly authorized representatives of the Government, subject to the provisions of § 7.7. Public examination will be restricted to those instruments which the department or agency of origin has so authorized in writing.

§ 7.7 Secret register.

Any instrument to be recorded will be placed on a secret record or register at the request of the department or agency submitting the same. No information will be given concerning any instrument in such record or register, and no examination or inspection thereof or of the index thereto will be permitted, except on the written authority of the head of the department or agency which submitted the instrument and requested secrecy, and the approval of such authority by the Commissioner of Patents and Trademarks. No instrument or record other than the one specified may be examined, and the examination must take place in the presence of a designated official of the Patent and Trademark Office. When the department or agency which submitted an instrument no longer requires secrecy with respect to that instrument, it will be recorded or registered anew in the appropriate part of the register which is not secret.

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PART 1—RULES OF PRACTICE IN PATENT CASES

CODIFICATION NOTE: Part 1 is placed in a separate grouping of parts pertaining to patents. It appears on page 4 of this volume.

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AUTHORITY: Sec. 41, 60 Stat. 440, sec. 1, 66 Stat. 793, sec. 1, 78 Stat. 171; 15 U.S.C. 1123, 35 U.S.C. 6, 25, unless otherwise noted.

SOURCE: 30 FR 13193, Oct. 16, 1965, unless otherwise noted.

§ 2.1 Sections of Part 1 applicable.

Sections 1.1. to 1.26 of this chapter are applicable to trademark cases except such parts thereof which specifically refer to patents and except § 1.22 to the extent that it is inconsistent with §§ 2.85(e), 2.101(c) or § 2.162(d). Other sections of Part 1 incorporated by reference or referred to in particular sections of this part are also applicable to trademark cases.

[43 FR 35483, Aug. 10, 1978]

§ 2.6 Trademark fees.

In addition to the fees prescribed by statute, the following fees and charges are established by the Patent and Trademark Office for trademark cases:

(a) For each printed copy of a registration with data entered of record as of date of mailing, relating to renewal, cancellation, publication under section 12(c) of the 1946 Trademark Act and affidavits or declarations under sections 8 and 15 of such act:	
Omitting title	$1.70
Showing title	3.70
(b) For photocopies or other reproductions of records, drawings, or printed material, per page of material copied	0.30
(c) (Deleted)	
(d) For making drawings, when facilities are available, the cost of making the same:	
Rate per hour	12.00
Minimum charge per sheet	$10.00
(e) For correcting drawings, the cost of making the correction:	
Rate per hour (including a photoprint of the uncorrected drawing)	12.00
Minimum charge	3.00
(f) For abstracts of title to each registration or application:	
For the search, one hour or less, and certificate	[illegible]
Each additional hour or fraction thereof	[illegible]
For each brief from the digest of assignments, of 200 words or less	[illegible]
Each additional 100 words or fraction thereof	[illegible]
(g) For the special service of handling late filed fees in connection with an:	
Affidavit or declaration under §8	10.00
Opposition	25.00

See § 1.21 for patent and miscellaneous fees.

(Sec. 1, 66 Stat. 796; 35 U.S.C. 41)

[30 FR 13193, Oct. 16, 1965, as amended at 31 FR 5261, Apr. 1, 1966; 40 FR 57359, Dec. 9, 1975; 43 FR 35483, Aug. 10, 1978]

REPRESENTATION BY ATTORNEYS OR OTHER AUTHORIZED PERSONS

AUTHORITY: Secs. 2.11 to 2.19 also issued under 35 U.S.C. 31, 32.

§ 2.11 Applicants may be represented by an attorney.

The owner of a trademark may file and prosecute his own application for registration of such trademark, or he may be represented by an attorney or other person authorized to practice in trademark cases. The Patent and Trademark Office cannot aid in the selection of an attorney or other representative.

[41 FR 758, Jan. 5, 1976]

§ 2.12 Persons who may practice before the Patent and Trademark Office in trademark cases.

(a) *Attorneys at law.* Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State, Territory, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, may represent others before the Patent and Trademark Office in trademark cases. No application for recognition to practice in trademark cases by attorneys at law is required.

(b) Non-lawyers: Persons who are not attorneys at law as specified in paragraph (a) of this section are not recognized to practice before the Patent and Trademark Office in trademark cases, except that persons not attorneys at law who were recognized to practice before the Patent and Trademark Office under this chapter prior to January 1, 1957, will be recognized as agents to continue practice in trademark cases in the Patent and Trademark Office.

(c) Foreign attorneys and agents: Any foreign attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent or trademark office of the country in which he resides and practices, may be recognized to represent applicants located in such country before the United States Patent and Trademark Office in the presentation and prosecution of trademark applications: *Provided*, That the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases before the United States Patent and Trademark Office. Such recognition shall continue only during the period that the conditions specified obtain.

(d) Recognition of any person under this section is not to be construed as sanctioning or authorizing the performance of any acts regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No persons other than those mentioned in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Patent and Trademark Office in trademark cases. Any person may appear for himself, or for a firm of which he is a member, or for a corporation or association of which he is an officer and which he is authorized to represent, if such person, firm, corporation, or association is a party to the proceeding.

(f) Persons otherwise entitled to be recognized to practice under this section may, nevertheless, be refused recognition for cause.

§ 2.13 Professional conduct.

Attorneys and other persons appearing before the Patent and Trademark Office in trademark cases must conform to the standards of ethical and professional conduct set forth in the Code of Professional Responsibility of the American Bar Association as amended February 24, 1970, insofar as such code is not inconsistent with this part. A copy of the said code is available for inspection in the Office of the Solicitor, U.S. Patent and Trademark Office, Room 11C04, Building 3, Crystal Plaza, 2021 Jefferson Davis Highway, Arlington, VA. Copies of the code are available upon request to the American Bar Center, 1155 East 60th Street, Chicago, IL 60637.

[36 FR 12618, July 2, 1971]

§ 2.14 Advertising.

(a) The use of display advertising, circulars, letters, cards, and similar material to solicit trademark business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent and Trademark Office or suspended or excluded from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs; simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of professional cards, listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories are not prohibited.

(c) No person not an attorney, solicitor or lawyer shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent and Trademark Office, represent himself to be an attorney, solicitor or lawyer.

[30 FR 13193, Oct. 16, 1965, as amended at 41 FR 758, Jan. 5, 1976]

§ 2.15 Signature and certificate of attorney or other representative.

Every paper filed by an attorney at law or other person representing an applicant or party to a proceeding in the Patent or Trademark Office must bear the signature of such attorney at law or other person except those papers which are required to be signed by the applicant or party. The signature of an attorney at law or such other person to a paper filed by him, or the filing of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

[41 FR 758, Jan. 5, 1976]

§ 2.16 Suspension or exclusion from practice.

The Commissioner of Patents and Trademarks may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, attorney, or agent shown to be incompetent or disreputable, or guilty of unethical or unprofessional conduct or gross misconduct, or who refuses to comply with the rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the Patent and Trademark Office by word, circular, letter, or in any other manner. The reasons for any such suspension or exclusion shall be duly recorded. Proceedings for suspension, disbarment or exclusion from practice are conducted as provided in § 1.348. (See 35 U.S.C. 1958, sec. 32 for review of the Commissioner's action by the United States District Court for the District of Columbia.)

§ 2.17 Recognition for representation.

(a) When an attorney at law acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a trademark case, his personal appearance or signature shall constitute a representation to the Patent and Trademark Office that under the provisions of these rules and the law he is authorized, and qualified under § 2.12(a), to represent the particular party in whose behalf he acts. Further proof of authority to act in a representative capacity may be required.

(b) Before any non-lawyer will be allowed to take action of any kind in any application or proceeding, a written authorization from the applicant, party to the proceeding, or other person entitled to prosecute such application or proceeding must be filed therein.

§ 2.18 Correspondence, with whom held.

Correspondence will be sent to the applicant or a party to a proceeding at his address unless papers are transmitted by an attorney at law, or a written power of attorney is filed, or written authorization of other person entitled to be recognized is filed, or the applicant or party designates in writing another address to which correspondence is to be sent, in which event correspondence will be sent to the attorney at law transmitting the papers, or to the attorney at law designated in the power of attorney, or to the other person designated in the written authorization, or to the address designated by the applicant or party for correspondence. Correspondence will continue to be sent to such address until the applicant or party, or the attorney at law or other authorized representative of the applicant or party, indicates in writing that correspondence is to be sent to another address. Double correspondence will not be undertaken by the Patent and Trademark Office, and if more than one attorney at law or other authorized representative appears or signs a paper, the Office reply thereto will be sent to the address already established in the file until another correspondence address is specified by the applicant or party or by the attorney or other authorized representative of the applicant or party.

[41 FR 758, Jan. 5, 1976]

§ 2.19 Revocation of power of attorney or of other authorization to represent.

Authority to represent an applicant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Commissioner; and when it is so revoked, the Office will communicate directly with the applicant or party to the proceeding or with such other qualified person as may be authorized. The Patent and Trademark Office will notify the person affected of the revocation of his authorization.

[41 FR 758, Jan. 5, 1976]

DECLARATIONS

§ 2.20 Declarations in lieu of oaths.

The applicant or member of the firm or an officer of the corporation or association making application for registration or filing a document in the Patent and Trademark Office relating to a mark may, in lieu of the oath, affidavit, verification, or sworn statement required from him, in those instances prescribed in the individual rules, file a declaration that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true, if, and only if, the declarant is, on the same paper, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001), and may jeopardize the validity of the application or document or any registration resulting therefrom.

[31 FR 5261, Apr. 1, 1966]

APPLICATION FOR REGISTRATION

AUTHORITY: Secs. 2.21 to 2.47 also issued under sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

§ 2.21 Requirements for receiving a filing date.

(a) Materials submitted as an application for registration of a mark will not be accorded a filing date as an application until all of the following elements are received:

(1) Name of the applicant;

(2) A name and address to which communications can be directed;

(3) A drawing or other identification of the mark sought to be registered;

(4) An identification of goods or services;

(5) At least one specimen or facsimile of the mark as actually used;

(6) A date of first use of the mark in commerce, or a certification or certified copy of a foreign registration if the application is based on such foreign registration pursuant to section 44(e) of the Act, or a claim of the benefit of a prior foreign application in accordance with section 44(d) of the Act;

(7) The required filing fee for at least one class of goods or services.

Compliance with one or more of the rules relating to the elements specified above may be required before the application is further processed.

(b) The filing date of the application is the date on which all of the elements set forth in paragraph (a) of this section are received in the Patent and Trademark Office.

(c) If the papers are so defective that they cannot be accepted, the applicant will be notified and the papers and fee held 6 months. If the requirements for receiving a filing date have not been satisfied within such time, the papers and fee will be returned to the applicant or otherwise disposed of; the drawing or fee of an unaccepted application may be transferred to a later application.

[37 FR 931, Jan. 21, 1972]

§ 2.23 Serial number.

Applications will be given a serial number as received, and the applicant will be informed of the serial number and the filing date of the application.

[37 FR 931, Jan. 21, 1972]

§ 2.24 Designation of representative by foreign applicant.

If the applicant is not domiciled in the United States, he must designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the Patent and Trademark Office will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under § 2.12(a), or qualified under paragraph (b) or (c) of § 2.12 and authorized under § 2.17(b).

§ 2.25 Papers not returnable.

After an application is filed the papers will not be returned for any purpose whatever; but the Office will furnish copies to the applicant upon request and payment of the fee.

§ 2.26 Use of old drawing in new application.

In an application filed in place of an abandoned or rejected application, or in an application for reregistration (§ 2.158), a new complete application is required, but the old drawing, if suitable, may be used. The application must be accompanied by a request for the transfer of the drawing, and by a permanent photographic copy, or an order for such copy, of the drawing to be placed in the original file. A drawing so transferred, or to be transferred, cannot be amended.

§ 2.27 Pending trademark application index; access to applications.

(a) An index of pending applications including the name and address of the applicant, a reproduction or description of the mark, the goods or services with which the mark is used, the class number, the dates of use, and the serial number and filing date of the application will be available for public inspection as soon as practicable after filing.

(b) Access to the file of a particular pending application will be permitted prior to publication under § 2.80 upon written request.

(c) Decisions of the Commissioner and the Trademark Trial and Appeal Board in applications and proceedings relating thereto are published or available for inspection or publication.

(d) After a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

[36 FR 25406, Dec. 31, 1971, as amended at 37 FR 2880, Feb. 9, 1972]

THE WRITTEN APPLICATION

§ 2.31 Application must be in English.

The application must be in the English language and plainly written on but one side of the paper. It is deemed preferable that the application be on legal or lettersize paper, typewritten double spaced, with at least a one and one-half inch (3.8 cm.) margin on the left-hand side and top of the page.

[39 FR 12247, Apr. 4, 1974]

§ 2.32 Application to be signed and sworn to or include a declaration by applicant.

(a) The application must be made to the Commissioner of Patents and Trademarks and must be signed and verified (sworn to) or include a declaration in accordance with § 2.20 by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Re-executed papers or a statement which is verified or which includes a declaration in accordance with § 2.20 of continued use of the mark may be required when the application has not been filed in the Patent and Trademark Office within a reasonable time after the date of execution.

(c) The signature to the application must be the correct name of the applicant, since the name will appear in the certificate of registration precisely as it is signed to the application. The name of the applicant, wherever it appears in the papers of the application, will be made to agree with the name as signed.

§ 2.33 Requirements for application.

(a)(1) The application shall include a request for registration and shall specify:

(i) The name of the applicant;

(ii) The citizenship of the applicant; if the applicant be a partnership, the names and citizenship of the general partners or, if the applicant be a corporation or association, the state or nation under the laws of which organized;

(iii) The domicile and post office address of the applicant;

(iv) That the applicant has adopted and is using the mark shown in the accompanying drawing;

(v) The particular goods on or in connection with which the mark is used;

(vi) The class of merchandise according to the official classification, if known to the applicant;

(vii) The date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application (see § 2.38);

(viii) The date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce (see § 2.38);

(ix) The mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified.

(2) If more than one item of goods is specified in the application, the dates of use required in paragraphs (a)(1) (vii) and (viii) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(3) The word "commerce" as used throughout this part means commerce which may lawfully be regulated by Congress, as specified in section 45 of the Act.

(b) The application must also include averments to the effect that the applicant or other person making the verification or declaration in accordance with § 2.20 believes himself or the firm, corporation, or association in whose behalf he makes the verification or declaration in accordance with § 2.20 to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that the specimens or facsimiles show the mark as actually used in connection with the goods; and that the facts set forth in the application are true.

(c) For an application for the registration of a mark for goods or services falling within a plurality of classes, see § 2.87.

§ 2.35 Description of mark.

A description of the mark, which must be acceptable to the Examiner of Trademarks, may be included in the application, and must be included if required by the examiner. If the mark is displayed in color or a color combination, the colors should be described in the application.

§ 2.36 Identification of prior registrations.

Prior registrations of the same or similar marks owned by the applicant should be identified in the application.

§ 2.37 Authorization for representation; U.S. representative.

The authorization of a qualified person to represent applicant (§ 2.17(b)) and the designation of a domestic representative (§ 2.24) may be included as a paragraph or paragraphs in the application.

[41 FR 758, Jan. 5, 1976]

§ 2.38 Use by predecessor or by related companies.

(a) If the first use, the date of which is required by paragraphs (a)(1) (vii) or (viii) of § 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the Act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company as the case may be.

(b) If the mark is not in fact being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the Act, such facts must be indicated in the application.

(c) The Office may require such details concerning the nature of the relationship and such proofs as may be necessary and appropriate for the purpose of showing that the use by related companies inures to the benefit of the applicant and does not affect the validity of the mark.

(Sec. 5, 60 Stat. 429; 15 U.S.C. 1055)

§ 2.39 Omission of allegation of use in commerce by foreign applicants.

(a) The allegation that the mark is in use in commerce, required by § 2.33(b), and the statements of the dates of applicant's first use, required by § 2.33(a)(1) (vii) and (viii), may be omitted in the case of an application filed pursuant to section 44(e) of the Act for registration of a mark duly registered in the country of origin of a foreign applicant, provided the application when filed is accompanied by a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and that said registration is then in full force and effect. If the certificate is not in the English language, a translation is required.

(b) Such allegations and statements may also be omitted in the case of an application claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act. The application in such case shall state the date and country of the first foreign application and, before the application can be considered as allowable, there must be filed a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and the date of filing of the application. In such cases the specification of goods shall not exceed the scope of that covered by the foreign registration or application. In the event the application is based upon a subsequent regularly filed application in the same foreign country the application must so state and must show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(Sec. 44, 60 Stat. 441, as amended; 15 U.S.C. 1126)

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with § 2.20, depositions, or other appropriate evidence showing duration, extent and nature of use and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with § 2.20, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use thereof by applicant for the five years next preceding the application filing date, a showing by way of statements which are verified or which include declarations in accordance with § 2.20, in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

(Sec. 2, 60 Stat. 428; 15 U.S.C. 1052)

§ 2.42 Concurrent use.

(a) An application for registration as a lawful concurrent user shall specify and contain all the elements required by the preceding sections. The applicant in addition shall state in the application, to the extent of his knowledge, the concurrent lawful use of the mark by others, setting forth their names and addresses; registrations issued to or applications filed by such others, if any; the areas of such use; the goods on or in connection with which such use is made; the mode of such use; the periods of such use; and the area, the goods, and the mode of use for which the applicant seeks registration.

(b) The verification or declaration in accordance with § 2.20 shall be made with the stated exceptions.

(Sec. 2, 60 Stat. 428; 15 U.S.C. 1052)

§ 2.43 Service mark.

In an application to register a service mark, the application shall specify and contain all the elements required by the preceding sections for trademarks, but shall be modified to relate to services instead of to goods wherever necessary.

(Sec. 3, 60 Stat. 429; 15 U.S.C. 1052)

§ 2.44 Collective mark.

In an application to register a collective mark, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark.

(Sec. 4, 60 Stat. 429; 15 U.S.C. 1054)

§ 2.45 Certification mark.

In an application to register a certification mark, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is used; it shall allege that the applicant exercises legitimate control over the use of the mark and that he is not himself engaged in the production or marketing of the goods or services to which the mark is applied.

(Sec. 4, 60 Stat. 429, 435; 15 U.S.C. 1054)

§ 2.46 Principal Register.

All applications will be treated as seeking registration on the Principal Register unless otherwise stated in the application. Service marks, collective marks, and certification marks, registrable in accordance with the applicable provisions of section 2 of the Act, are registered on the Principal Register.

§ 2.47 Supplemental Register.

In an application to register on the Supplemental Register, the application shall so indicate and shall specify that the mark has been in lawful use in commerce, specifying the nature of such commerce, by the applicant for the preceding year, if the application is based on such use. When an applicant requests registration without a full year's use of the mark, in accordance with the last paragraph of section 23 of the Act, the showing required must be separate from the application.

(Sec. 23, 60 Stat. 435; 15 U.S.C. 1091)

[38 FR 18876, July 16, 1973]

DRAWING

AUTHORITY: Secs. 2.51 to 2.55 also issued under sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

§ 2.51 Drawing required.

(a) The drawing of the trademark shall be a substantially exact representation thereof as actually used on or in connection with the goods.

(b) The drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services. The drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description.

(c) In the case of an application for registration on the Supplemental Register, the drawing, when appropriate and necessary (section 23, third paragraph, of the Act), may be the drawing of a package or configuration of goods.

(d) If the application is for the registration only of a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements of § 2.52.

§ 2.52 Requirements for drawings.

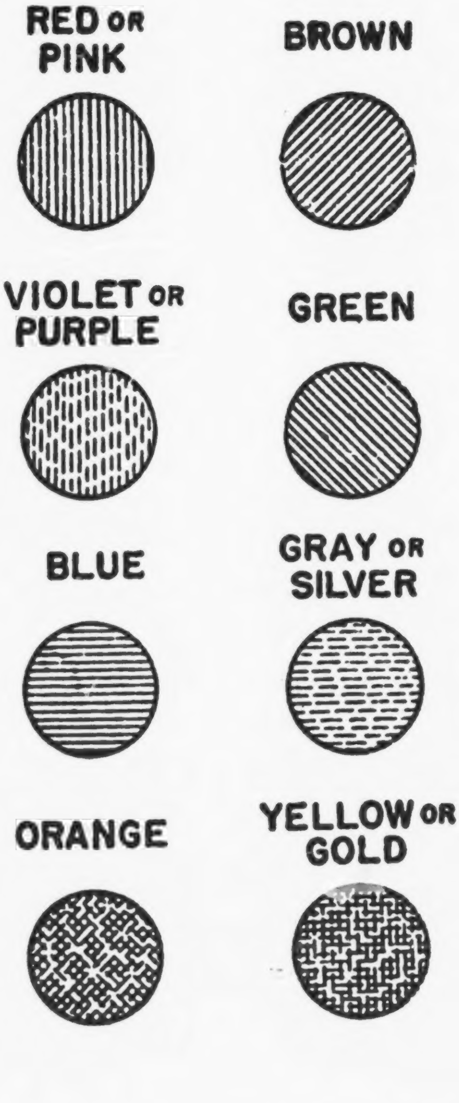
(a) *Character of drawing.* All drawings, except as otherwise provided, must be made with the pen or by a process which will give them satisfactory reproduction characteristics. A photolithographic reproduction or printer's proof copy may be used if otherwise suitable. Every line and letter must be black. This direction applies to all lines, however fine, and to shading. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. The requirements of this paragraph are not necessary in the case of drawings permitted and filed in accordance with paragraph (d) of § 2.51.

(b) *Paper and ink.* The drawing must be made upon pure white durable paper, the surface of which is calendered and smooth. A good grade of bond paper is suitable. India ink alone must be used for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not acceptable.

(c) *Size of paper and margins.* The size of the sheet on which a drawing is made must be 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long. One of the shorter sides of the sheet should be regarded as its top. When the figure is longer than the width of the sheet, the sheet should be turned on its side with the top at the right. The size of the mark must be such as to leave a margin of at least 1 inch (2.5 cm.) on the sides and bottom of the paper and at least 1 inch (2.5 cm.) between it and the heading.

(d) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge and not exceeding one-fourth of the sheet, there should be placed a heading, listing in separate lines, applicant's name, applicant's post office address, the dates of first use, and the goods or services recited in the application (or typical item of the goods or services if a number are recited in the application). This heading may be typewritten.

(e) *Linings for color.* Where color is a feature of a mark, the color or colors employed may be designated by means of conventional linings as shown in the following color chart:



[30 FR 13193, Oct. 16, 1965, as amended at 39 FR 12247, Apr. 4, 1974]

§ 2.53 Transmission of drawings.

Drawings transmitted to the Patent and Trademark Office, other than those typed in accordance with § 2.51(d), should be sent flat, protected by a sheet of heavy binder's board, or should be rolled for transmission in a suitable mailing tube to prevent mutilation or folding.

§ 2.54 Informal drawings.

A drawing not in conformity with §§ 2.51 to 2.53 may be accepted for purpose of examination, but the drawing must be corrected or a new one furnished, as required, before the mark can be published or the application allowed. The necessary corrections will be made by the Patent and Trademark Office upon applicant's request and at his expense.

[37 FR 3897, Feb. 24, 1972]

§ 2.55 Patent and Trademark Office may make drawings.

The Patent and Trademark Office, at the request of applicants and at their expense, will make drawings if facilities permit.

SPECIMENS

AUTHORITY: Secs. 2.56 to 2.58 also issued under sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

§ 2.56 Specimens.

The application must include five specimens of the trademark as actually used on or in connection with the goods in commerce. The specimens shall be duplicates of the actually used labels, tags, or containers, or the displays associated therewith or portions thereof, when made of suitable flat material and of a size not to exceed 8½ inches (21.6 cm.) wide and 13 inches (33.0 cm.) long.

[39 FR 12248, Apr. 4, 1974]

§ 2.57 Facsimiles.

When, due to the mode of applying or affixing the trademark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, five copies of a suitable photograph or other acceptable reproduction, not to exceed 8½ inches (21.6 cm.) wide and 13 inches (33.0 cm.) long, and clearly and legibly showing the mark and all matter used in connection therewith, shall be furnished.

[39 FR 12248, Apr. 4, 1974]

§ 2.58 Specimens or facsimiles in the case of a service mark.

(a) In the case of service marks, specimens or facsimiles as specified in §§ 2.56 and 2.57, of the mark as used in the sale or advertising of the services shall be furnished unless impossible because of the nature of the mark or the manner in which it is used, in which event some other representation acceptable to the Commissioner must be submitted.

(b) In the case of service marks not used in printed or written form, three single face, unbreakable, disc recordings will be accepted. The speed at which the recordings are to be played must be specified thereon. If facilities are not available to the applicant to furnish recordings of the required type, the Patent and Trademark Office may arrange to have made, upon request, and at applicant's expense, the necessary disc recordings from any type of recording the applicant submits.

EXAMINATION OF APPLICATION AND ACTION BY APPLICANTS

AUTHORITY: Secs. 2.61 to 2.69 also issued under sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

§ 2.61 Action by Examiner.

(a) Applications for registration will be examined or caused to be examined by the Examiner of Trademarks, and, if the applicant is found not entitled to registration for any reason, he will be so notified and advised of the reasons therefor and of any formal requirements or objections.

(b) The examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the Examiner of Trademarks shall notify each of said parties and also the attorney of this fact.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 2880, Feb. 9, 1972]

§ 2.62 Period for response.

The applicant has six months from the date of mailing of any action by the examiner to respond thereto. Such response may be made with or without amendment and must include such proper action by the applicant as the nature of the action and the condition of the case may require.

§ 2.63 Re-examination.

After response by the applicant, the application will be re-examined or reconsidered, and if the registration is again refused or formal requirements insisted upon, but not stated to be final the applicant may respond again.

§ 2.64 Final action.

On the first or any subsequent reexamination or reconsideration the refusal of the registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal or to a compliance with any requirement.

§ 2.65 Abandonment.

If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned.

§ 2.66 Revival of abandoned applications.

An application abandoned for failure to respond may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by the required fee, by a showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay, and by the proposed response, unless the same has been previously filed.

[31 FR 5261, Apr. 1, 1966]

§ 2.67 Suspension of action by the Patent and Trademark Office.

Action by the Patent and Trademark Office may be suspended for a reasonable time for good and sufficient cause. The fact that a proceeding is pending before the Patent and Trademark Office or a court which is relevant to the issue of registrability of the applicant's mark, or the fact that the basis for registration is, under the provisions of section 44(e) of the Act, registration of the mark in a foreign country and the foreign application is still pending, will be considered prima facie good and sufficient cause. An applicant's request for a suspension of action under this section filed within the 6-month response period (see § 2.62) may be considered responsive to the previous Office action. The first suspension is within the discretion of the Examiner of Trademarks and any subsequent suspension must be approved by the Commissioner.

[37 FR 3898, Feb. 24, 1972]

§ 2.68 Express abandonment (withdrawal) of application.

An application may be expressly abandoned by filing in the Patent and Trademark Office a written statement of abandonment or withdrawal of the application signed by the applicant, or the attorney or other person representing the applicant. The fact that an application has been expressly abandoned shall not, in any proceeding in the Patent and Trademark Office, affect any rights that the applicant may have in the mark which is the subject of the abandoned application.

[38 FR 7985, Mar. 27, 1973]

§ 2.69 Compliance with other laws.

When the sale or transportation of any product for which registration of a trademark is sought is regulated under an Act of Congress, the Office may, before allowance, make appropriate inquiry as to compliance with such act for the sole purpose of determining lawfulness of the commerce recited in the application.

AMENDMENT OF APPLICATIO

AUTHORITY: Secs. 2.71 to 2.75 als
under sec. 12, 60 Stat. 432; 15 U.S.C.

§ 2.71 Amendments to application.

(a) The application may be an
to correct informalities, or to av
jections made by the Pater
Trademark Office, or for oth
sons arising in the course of ex
tion. No amendments to the d
use will be permitted unles
changes are supported by affic
declaration in accordance with
by the applicant and by such s
as may be required by the exam

(b) Additions to the specifica
goods or services will not be pe
unless the mark was in actual
all of the goods or services prop
be added by the amendment
time the application was fil
unless the amendment is accon
by additional specimens (or fac
and by a supplemental affid
declaration in accordance wit
by the applicant in support the

(c) Amendment of the verific
declaration will not be permi
that filed with the applicat
faulty or defective, a substitute
plemental verification or dec
in accordance with § 2.20 m
filed.

§ 2.72 Amendments to descript drawing.

Amendments to the descript
drawing of the mark may be per
only if warranted by the specim
facsimiles) as originally filed, (...ed, or sup-
ported by additional specimens (...ens (or fac-
similes) and a supplemental a ...al affidavit
or declaration in accordance ...dance with
§ 2.20 alleging that the mark sh ...rk shown in
the amended drawing was in ...s in actual
use prior to the filing date of ...e of the ap-
plication. Amendments may ...ay not be
made if the nature of the n ...he mark is
changed thereby.

§ 2.73 Amendment to recite co ... concurrent use.

An application may be amended in the examiner's discretion so as to be treated as an application for a concurrent registration, provided the applica-

tion as amended satisfies the requirements of § 2.42.

§ 2.74 Form of amendment.

(a) In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the deletion or insertion is to be made. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant or his attorney or agent.

(b) When an amendatory clause is amended, it must be wholly rewritten so that no interlineation or erasure will appear in the clause, as finally amended, when the application is passed to registration. If the number or nature of the amendments shall render it otherwise difficult to consider the case or to arrange the papers [illegible]

[illegible]

the purpose of proceedings in the Patent and Trademark Office provided the application as originally filed was sufficient for registration on the register to which amended. Otherwise, the filing date of the amendment will be considered the effective filing date of the application so amended.

[41 FR 758, Jan. 5, 1976]

PUBLICATION AND ALLOWANCE

§ 2.80 Publication for opposition.

If, on examination or reexamination of an application for registration on the Principal Register, it appears that the applicant is entitled to have his mark registered, the mark will be published in the *Official Gazette* for opposition. The mark will also be published in the case of an application to be placed in interference or concurrent use proceedings, if otherwise registrable.

[41 FR 758, Jan. 5, 1976]

§ 2.81 Allowance of application.

If no opposition is filed within the time permitted (§§ 2.101 and 2.102), or if filed and dismissed, and if no interference is declared, or concurrent use proceeding instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

(60 Stat. 427; 15 U.S.C. 1057)

[31 FR 5555, Apr. 8, 1966. Redesignated at 37 FR 2880, Feb. 9, 1972]

§ 2.82 Marks on Supplemental Register [illegible]

[illegible]

§ 2.83 Conflicting marks.

(a) Whenever an application is made for registration of a mark which so resembles another mark or marks pending registration as to be likely to cause confusion or mistake or to deceive, the mark with the earliest effective filing date will be published in the *Official Gazette* for opposition if eligible for the Principal Register, or issued a certificate of registration if eligible for the Supplemental Register. A notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark.

(b) In situations in which conflicting applications have the same effective filing date, the application with the earliest date of execution will be published in the *Official Gazette* for opposition or issued on the Supplemental Register. A notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution.

(c) Action on the conflicting application which is not published in the *Official Gazette* for opposition or not issued on the Supplemental Register will be suspended by the Examiner of Trademarks until the published or issued application is registered or abandoned.

[37 FR 2880, Feb. 9, 1972]

§ 2.84 Jurisdiction over published or allowed applications.

(a) After publication or allowance, [illegible]

[illegible] for all statutory purposes to trademark applications filed in the Patent and Trademark Office on or after September 1, 1973, and to registrations issued on the basis of such applications. It shall not apply to applications filed on or before August 31, 1973, nor to registrations issued on the basis of such applications.

(b) With respect to applications filed on or before August 31, 1973, and registrations issued thereon, including older registrations issued prior to that date, the classification system under which the application was filed will govern for all statutory purposes, including, inter alia, the filing of petitions to revive, appeals, oppositions, petitions for cancellation, affidavits under section 8 and renewals, even though such petitions to revive, appeals, etc., are filed on or after September 1, 1973.

(c) Section 6.2 of Part 6 of this chapter specifies the system of classification for goods and services which applies for all statutory purposes to all trademark applications filed in the Patent and Trademark Office on or before August 31, 1973, and to registrations issued on the basis of such applications, except when the registration may have been issued under a classification system prior to that set forth in § 6.2. Moreover, this classification will also be utilized for facilitating trademark searches until all pending and registered marks in the search file are organized on the basis of the international system of classification.

(d) Renewals filed on registrations [illegible]

[illegible] insufficient if the required additional amount of the fee is received in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office, or if action is sought only for the number of classes equal to the number of fees submitted.

(f) Sections 6.3 and 6.4 specify the system of classification which applies to certification marks and collective membership marks.

(g) Classification schedules shall not limit or extend the applicant's rights.

[38 FR 14681, June 4, 1973, as amended at 39 FR 16885, May 10, 1974; 41 FR 758, Jan. 5, 1976]

§ 2.86 Plurality of goods or services comprised in single class may be covered by single application.

A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the goods or services be stated and the mark has actually been used on or in connection with all of the goods or in connection with all of the services specified.

§ 2.87 Combined applications.

An application also may be filed to register the same mark for any or all of the goods and/or services upon or in connection with which the mark is actually used and which fall within a plurality of classes. However, dates of [illegible]

[illegible] be made of record in each of the applications involved prior to the allowance of any of the applications.

(b) The issuance of any original certificate may be suspended upon request of the applicant, for a period not exceeding 6 months, to permit such consolidation.

[37 FR 3898, Feb. 24, 1972]

INTERFERENCES AND CONCURRENT USE PROCEEDINGS

AUTHORITY: Secs. 2.91 to 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

§ 2.91 Interferences.

(a) An interference will not be declared between two applications or between an application and a registration except upon petition to the Commissioner. Interferences will be declared by the Commissioner only upon a showing of extraordinary circumstances which would result in a party being unduly prejudiced without an interference. In ordinary circumstances, the availability of an opposition or cancellation proceeding to the party will be deemed to remove any undue prejudice.

(b) Registrations and applications to register on the Supplemental Register, registrations under the Act of 1920, and registrations of marks the right to use of which has become incontestable are not subject to interference.

[illegible]

[illegible]

of record of any of the applications or registrations involved, the notice shall be sent to him or his assignee of record. The notice shall give the name and address of the adverse party and of his attorney or other authorized representative, if any, together with the serial number and date of filing and publication, if published, of each of the applications or registrations involved.

[41 FR 759, Jan. 5, 1976]

§ 2.94 Interference motions.

(a) Motions to dissolve an interference may be brought on the ground: (1) That no interference in fact exists, (2) that there has been such irregularity in declaring the same as will preclude a proper determination of the interference, or (3) that an applicant's mark is not registrable.

(b) Any party may bring a motion to add to the interference any other conflicting application which he may own.

(c) Motions under paragraph (a) or (b) of this section shall be made not later than forty days after the notice of interference is mailed and shall contain a full statement of the grounds relied upon. Such motions, if in proper form, will be transmitted to the Examiner of Trademarks for determination. Such transmittal will act as a stay of proceedings pending the determination of the motion. If the motion is not in proper form or if it is not brought within the time specified and no good cause is shown for the delay, it will not be considered and the parties will be so notified. [illegible]

[illegible] determination of such a motion, but the question may be reviewed by the Trademark Trial and Appeal Board in its final decision in the interference.

§ 2.96 Issue; burden of proof.

The issue in an interference between applications shall be the respective rights of the parties to registration. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register. The party whose application or registration involved in the interference has the latest filing date (the junior party) will be regarded as having the burden of proof.

§ 2.97 Enlargement of issue.

Any party to an interference may, within fifty days after the notice of interference is mailed, file a pleading setting forth affirmatively any matter on the basis of which, if proved, the other party would not be entitled to obtain or maintain a registration. Such pleading may request affirmative relief by way of cancellation of a registration involved, but no defense attacking the validity of such registration may be otherwise raised in the proceeding. Such request for affirmative relief must be verified or include a declaration in accordance with § 2.20 and must be accompanied by the fee as required by section 14 of the Act. A reply to such request for affirmative relief is required within twenty days after service thereof, but no reply need be filed to other affirmative defenses.

§ 2.98 Adding party to interference.

If, during the pendency of an interference, another case appears involving substantially the same registrable subject matter, the Examiner of Trademarks may request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course if no testimony has been taken. If any testimony has been taken or is about to be taken, the case will not be added except upon approval of a member of the Trademark Trial and Appeal Board. If the case is not added, the Examiner of Trademarks may suspend action on such case pending termination of the interference proceeding.

[37 FR 2880, Feb. 9, 1972]

§ 2.99 Application to register as concurrent user.

(a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration. When it is determined that the mark is ready for publication or allowance, except for questions relating to concurrent registration, the applicant may be required to furnish as many copies of his written application, specimens and drawing, as may be necessary. The Examiner of Trademarks shall prepare notices for the applicant and for each applicant, registrant, or user specified in the application for registration as a concurrent user. Such notices for the specified parties shall give the name and address of the applicant and of his attorney or other authorized representative, if any, together with the serial number and filing date of the application.

(b) The notices shall be sent to each of the parties, in care of their attorneys or other representatives, if they have attorneys or other representatives of record, and if one of the parties is a registrant, a notice shall also be sent to him or his assignee of record. A copy of the application shall be forwarded with the notices to the parties specified in the application. An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified in the application to register as concurrent user but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of other parties specified in the application to register as concurrent user, answer must be filed within forty days after the mailing of the notice.

(c) The procedure shall follow the practice in interference proceedings insofar as it is applicable and the time limitations prescribed in such practice shall be applicable herein.

(d) When concurrent registration is sought on the basis of a court determination of the rights of the parties to use the marks in commerce, the application shall be examined by the Examiner of Trademarks. If the applicant is entitled to registration subject only to the concurrent lawful use of a party to the court proceeding, the Examiner of Trademarks may publish or allow the application, provided the court decree specifies the rights of the parties.

(Secs. 2, 18, 60 Stat. 428, 434; 15 U.S.C. 1052, 1068)

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 7606, Apr. 18, 1972; 41 FR 759, Jan. 5, 1976]

OPPOSITION

AUTHORITY: Secs. 2.101 to 2.106 also issued under secs. 13, 17, 60 Stat. 433, 434; 15 U.S.C. 1063, 1067.

§ 2.101 Filing an opposition.

(a) Any person who believes that he would be damaged by the registration of a mark upon the Principal Register may oppose the same by filing an opposition in the Patent and Trademark Office within thirty days after publication of the mark sought to be registered (§ 2.80), or within an extension of the time for filing an opposition (§ 2.102). The opposition must be verified, or include a declaration in accordance with § 2.20, unless the opposition is filed by an attorney at law or other authorized representative in accordance with § 2.103.

(b) An opposition must include the required fee for each class sought to be opposed in the application. If fees insufficient to cover all classes in the application are submitted, the particular class or classes in which opposition is sought should be specified. If persons are joined in an opposition, a fee for each class sought to be opposed in the application for each person so joined is required.

(c) If no fee, or a fee insufficient to cover at least one class, is filed within 30 days after publication of the mark to be opposed or within an extension of the time for filing an opposition, the opposition will not be refused if the required fee(s) and service charge (see § 2.6(g)) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. In situations covered by this paragraph, § 2.85(e) may not be utilized.

[41 FR 759, Jan. 5, 1976, as amended at 43 FR 35483, Aug. 10, 1978]

§ 2.102 Extension of time for filing opposition.

(a) A request to extend the time for filing an opposition must be made by a person who believes that he would be damaged by the registration of the mark on the Principal Register, but an attorney at law or other person authorized to represent a party may file the request on behalf of a potential opposer. The potential opposer must be identified with reasonable certainty in the request. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person to whom the extension was granted was misidentified through mistake, or an opposition filed in a different name may be accepted if the person filing the opposition is in privity with the person to whom the extension was granted.

(b) A written request to extend the time for filing an opposition must be received in the Patent and Trademark Office before the expiration of thirty days from the date of publication, and should specify the period of extension desired. A first extension of time will be granted upon request if the extension is for not more than thirty days. Other extensions of time may be granted by the Commissioner for good cause.

[41 FR 759, Jan. 5, 1976]

§ 2.103 Opposition filed by attorney at law or other authorized representative.

An opposition may be filed in the Patent and Trademark Office by an attorney at law or other person authorized to represent a party, either within thirty days after publication of the mark sought to be registered (§ 2.80), or within an extension of the time for filing an opposition (§ 2.102), but the opposition will be null and void unless confirmed by the opposer by verification, or by declaration in accordance with § 2.20, within thirty days after the filing of the opposition, or within such further time as may be fixed by the Commissioner upon request made before the expiration of the thirty days.

[41 FR 759, Jan. 5, 1976]

§ 2.104 Contents of opposition.

The opposition must set forth a short and plain statement showing how the opposer would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition including exhibits shall be filed.

[37 FR 7606, Apr. 18, 1972]

§ 2.105 *Notification of opposition proceedings.*

A notification of an opposition which has been regularly filed shall be prepared, identifying the title and number of the proceeding and the application involved, and designating a time, not less than thirty days from the mailing date of such notification, within which answer must be filed. Copies of this notification shall be forwarded by the Trademark Trial and Appeal Board to the parties in care of their attorneys or other representatives, if they have attorneys or other representatives of record. The duplicate copy of the opposition and exhibits shall be forwarded with the notification to the applicant.

[41 FR 759, Jan. 5, 1976]

§ 2.106 Answer.

(a) If no answer is filed within the time set, the opposition may be decided as in case of default.

(b)(1) An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, or prior judgment. When pleading special matters, the Federal Rules of Civil Procedures shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original notice of opposition or in any amendment thereto made under Rule 15, FRCP.

(2)(i) A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) The opposition may be withdrawn without prejudice before the answer is filed. After answer is filed the opposition may not be withdrawn without prejudice except with the consent of the applicant.

[30 FR 13193, Oct. 16, 1965, as amended at 46 FR 6940, Jan. 22, 1981]

§ 2.107 Amendment of opposition.

An opposition may be amended in the same manner and to the same extent as a complaint in a civil action before a United States district court. See Rule 15 of the Federal Rules of Civil Procedure.

CANCELLATION

AUTHORITY: Secs. 2.111 to 2.114 also issued under secs. 14, 17, 24, 60 Stat. 433, 434, 436; 15 U.S.C. 1064, 1067, 1092.

§ 2.111 Time for filing petition for cancellation.

Any person who believes that he is or will be damaged by a registration may, upon payment of the required fee for each class sought to be cancelled in the registration, apply to the Commissioner to cancel said registration as to the specified class or classes. A petition to cancel which includes insufficient fees to cover all classes in the registration should specify the particular class or classes for which cancellation is sought. Such petition may be made at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act (§ 2.153), and in cases involving the grounds specified in section 14(c), (d) and (e) of the Act. In all other cases such petition must be made within five years from the date of registration of the mark under the Act of 1946 or from the date of publication under section 12(c) of the Act.

[41 FR 759, Jan. 5, 1976]

§ 2.112 Petition for cancellation.

The petition to cancel, which must be verified, or include a declaration in accordance with § 2.20, must set forth a short and plain statement showing how the petitioner is or will be damaged by the registration, state the grounds for cancellation, and indicate the respondent party to whom notification shall be sent. A duplicate copy of the petition, including exhibits, shall be filed with the petition. Applications to cancel different registrations owned by the same party may be joined in one petition when appropriate, but the required fee must be included for each class sought to be cancelled in each registration against which each application to cancel is filed. If persons are joined in a petition to cancel, a fee for each class sought to be cancelled for each person so joined is required.

[41 FR 759, Jan. 5, 1976]

§ 2.113 Notification of filing of petition.

(a) When a petition for cancellation is filed, it shall be transmitted to the Trademark Trial and Appeal Board, which shall make examination thereof to determine if it is formally correct. If the petition is found to be defective as to form, the party filing the same shall be so advised and allowed a reasonable time for correcting the informality.

(b) When the petition is correct as to form, a notification shall be prepared, identifying the title and number of the proceeding and the registration involved, and designating a time, not less than thirty days from the mailing date of such notification, within which answer must be filed. A copy of this notification shall be forwarded to the petitioner in care of his attorney or other representative, if he has an attorney or other representative of record. The duplicate copy of the petition and exhibits shall be forwarded with a copy of such notification to the respondent party.

[30 FR 13193, Oct. 16, 1965, as amended at 41 FR 760, Jan. 5, 1976]

§ 2.114 Answer.

(a) If no answer is filed within the time set, the petition may be decided as in case of default.

(b)(1) An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, or prior judgment. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number and date of issuance in an original petition for cancellation or in any amendment thereto made under Rule 15, FRCP.

(2) (i) A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer if filed. If grounds for a counterclaim are known to respondent when the answer to the petition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the cancellation proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if it is the subject of another proceeding between the same parties or anyone in privity therewith.

(ii) An attack on the validity of a registration pleaded by a petitioner for cancellation will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs, or oral argument will be reset or extended when necessary, upon motion by a party, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed the petition may not be withdrawn without prejudice except with the consent of the registrant.

[30 FR 13193, Oct. 16, 1965, as amended at 46 FR 6940, Jan. 22, 1981; 46 FR 11548, Feb. 9, 1981]

§ 2.115 Amendment of petition for cancellation.

A petition for cancellation may be amended in the same manner and to the same extent as a complaint in a civil action before a United States district court. See Rule 15 of the Federal Rules of Civil Procedure.

PROCEDURE IN INTER PARTES PROCEEDINGS

AUTHORITY: Secs. 2.116 to 2.136 also issued under sec. 17, 60 Stat. 434; 15 U.S.C. 1067.

§ 2.116 Federal Rules of Civil Procedure.

(a) Except as otherwise provided, and wherever applicable and appropriate, procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure.

(b) The party having the latest filing date in an interference, the opposer in an opposition proceeding, the petitioner in a cancellation proceeding, and the applicant to register as a concurrent lawful user (or such applicant having the latest filing date), shall be deemed to be in the position of plaintiff, and the other parties to such proceedings shall be deemed to be in the position of defendants.

(c) The opposition and the petition to cancel, and the answers thereto, correspond to complaint and answer in court proceedings. Such pleadings as may be filed in interference and concurrent registration proceedings will be treated as complaints or affirmative defenses, depending upon the party filing, but the filing of a pleading in such proceedings shall not operate to change the position of the parties as set forth in the preceding paragraph.

(d) The assignment of testimony periods corresponds to setting a case for trial in court proceedings.

(e) The taking of depositions during the assigned testimony periods corresponds to the trial in court proceedings.

(f) Oral hearing corresponds to oral summation in court proceedings.

[30 FR 13193, Oct. 16, 1965. Redesignated and amended at 37 FR 7606, Apr. 18, 1972]

§ 2.117 Suspension of proceedings.

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action.

[37 FR 7606, Apr. 18, 1972]

§ 2.118 Undelivered Office notices.

When the notices sent by the Patent and Trademark Office to any registrant are returned to the Office undelivered, or when one of the parties resides abroad and his representative in the United States is unknown, additional notice may be given by publication in the *Official Gazette* for such period of time as the Commissioner may direct.

§ 2.119 Service of papers.

(a) Every paper filed in the Patent and Trademark Office in inter partes cases, including notice of appeal, must be served upon the other parties except the notice of interference (§ 2.93), the notification of opposition (§ 2.105), the petition for cancellation (§ 2.113), and the notice of a concurrent use proceeding (§ 2.99), which are mailed by the Patent and Trademark Office. Proof of such service must be made before the paper will be considered by the Office. A statement signed by the attorney or other authorized representative, attached to or appearing on the original paper when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service.

(b) Service of papers must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and may be made in either of the following ways: (1) By delivering a copy of the paper to the person served; (2) by leaving a copy at the usual place of business of the person served, with someone in his employment; (3) when the person served has no usual place of business, by leaving a copy at his residence, with a member of his family over 14 years of age and of discretion; (4) transmission by first-class mail, which may also be certified or registered. Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining service or serving the paper is practicable, service may be by notice published in the *Official Gazette.*

(c) When service is made by mail, the date of mailing will be considered the date of service. Whenever a party is required to take some action within a prescribed period after the service of a paper upon him by another party and the paper is served by mail, 5 days shall be added to the prescribed period.

[37 FR 7606, Apr. 18, 1972, as amended at 41 FR 760, Jan. 5, 1976]

§ 2.120 Discovery procedure.

The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in inter partes trademark cases except as otherwise provided in this section. The Trademark Trial and Appeal Board will specify the closing date for the taking of discovery.

(a) *Depositions for discovery*—(1) *Procedure.* The deposition of a person shall be taken in the Federal judicial district where he resides or is regularly employed. The responsibility for securing the attendance of a proposed deponent, other than a party or anyone who at the time set for the taking of the deposition was an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, rests wholly with the interested party See 35 U.S.C. 24.

(2) *Discovery of foreign party.* The discovery deposition of a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Procedure to testify on behalf of a party, domiciled in a foreign country may be taken in the manner prescribed by § 2.124.

(3) *Use of discovery depositions.* A discovery deposition shall not be considered as part of the record in the case unless the party offering the deposition, or any part thereof, files the same before the close of his testimony period (testimony- in-chief or rebuttal as appropriate) and also files a notice of reliance thereon. A discovery deposition should not be filed in the Patent and Trademark Office in the absence of a notice of reliance. Objections, including any made during the examination, will be considered only if made or renewed at the hearing.

(b) *Use of admission or answer to interrogatory.* No admission or answer to an interrogatory shall be considered as part of the record in the case unless the party propounding the request for admission or interrogatory files, before the close of his testimony period (testimony-in-chief or rebuttal, as appropriate), a copy of the admission and the request therefor and/or a copy of the interrogatory and its answer and also files a notice of reliance thereon.

(c) *Failure to make discovery: Sanctions.* (1) If any party fails or refuses to answer any proper question in taking discovery depositions or fails or refuses to answer any proper question propounded by interrogatories or fails or refuses to comply with a request to produce and permit the inspection and copying of designated things, the party seeking discovery may file a motion with the Trademark Trial and Appeal Board for an order compelling discovery. Such a motion must be supported by a written statement by the attorney for the moving party that the moving party or its attorney has conferred with the opposing party or its attorney in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If issues raised by the motion are subsequently resolved between the parties, the attorney for the moving party should advise the Trademark Trial and Appeal Board in writing of the matters in the motion which no longer require decision by the Board.

(2) If a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to obey an order to provide or permit discovery, the Trademark Trial and Appeal Board may strike out all or any part of any pleading of that party, dismiss the action or proceeding, or deny any part thereof, enter judgment as by default against that party or take any such other action as may be deemed appropriate.

[37 FR 7606, Apr. 18, 1972, as amended at 41 FR 760, Jan. 5, 1976]

§ 2.121 Assignment of times for taking testimony.

(a) Times will be assigned for the taking of testimony in behalf of each of the parties, and no testimony shall be taken except during the times assigned. If there be more than two parties to an interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties, to rebut their evidence, and to meet the evidence of junior parties.

(b) The times will ordinarily be assigned in the notices sent by the Patent and Trademark Office in interferences and in concurrent use proceedings, and in a notice sent after the answers have been filed in cases of opposition and cancellation.

§ 2.122 Matters in evidence.

(a) The files of the applications or registrations specified in the declaration of interference or in the notice in case of concurrent registration proceedings, of the application against which an opposition is filed, and of the registration against which a petition for cancellation or an affirmative defense requesting cancellation is filed, form part of the record of the proceeding without any action by the parties, and may be referred to for any relevant and competent purpose.

(b) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if two copies showing status and title of the printed registration or an order for such copies accompany the opposition or petition.

(c) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation, and official records, if competent evidence and pertinent to the issue, may be introduced in evidence by filing in the Patent and Trademark Office a notice to that effect during the period for the taking of the testimony of the party (during the period for taking of testimony-in-chief if such matters are not in rebuttal), specifying the record or the printed publication, the page or pages to be used, indicating generally its relevance, and accompanied by the record or authenticated copy or the printed publication or a copy. When a copy of an official record of the Patent and Trademark Office is filed, it need not be a certified copy. The notice and copy of the record or publication must be served on each of the other parties.

(d) Upon motion duly made and granted, testimony taken in another proceeding, or testimony taken in a suit between the same parties or those in interest, may be used in a proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall or demand the recall of witnesses whose testimony has been taken, and to take other testimony in rebuttal of the testimony.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 7607, Apr. 18, 1972]

§ 2.123 Trial testimony in inter partes cases.

(a) *Manner of taking testimony.* Testimony of witnesses in inter partes cases may be taken: (1) By depositions upon oral examination as provided by this section, or (2) by depositions upon written questions in accordance with the requirements of this section and § 2.124.

(b) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated.

(c) *Notice of examination of witnesses.* Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a witness is not known, a general description sufficient to identify him or the particular class or group to which he belongs, together with a satisfactory explanation, may be given instead. Neither party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available.

(d) *Persons before whom depositions may be taken.* Depositions may be taken before persons designated by Rule 28 of the Federal Rules of Civil Procedure.

(e) *Examination of witnesses.* (1) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition is to be taken.

(2) The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of Rule 28 of the Federal Rules of Civil Procedure) in the presence of the officer except when his presence is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise. In the absence of all opposing parties and their attorneys or other authorized representatives, depositions may be taken in longhand, typewriting, or stenographically.

(3) The opposing party shall have full opportunity to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice.

(4) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(5) When the deposition has been transcribed, the deposition shall be carefully read over by the witness or by the officer to him, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties.

(f) *Certification and filing by officer.* The officer shall annex to the deposition his certificate showing:

(1) Due administration of the oath by the officer to the witness before the commencement of his deposition;

(2) The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his presence;

(3) The presence or absence of the adverse party;

(4) The place, day, and hour of commencing and taking the deposition;

(5) The fact that the officer was not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure.

If any of the foregoing requirements are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by an agreement, he shall then, without delay, securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents and Trademarks. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted in a separate package marked and addressed as provided in this section.

(g) *Form of deposition.* (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The deposition may be written on legal-size or letter-size paper, with a wide margin on the left hand side of the page, and with the writing on one side only of the sheet. The questions propounded to each witness must be consecutively numbered and each question must be followed by its answer.

(2) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

(3) Each deposition must contain an index of the names of the witnesses, giving the pages where their examination and cross-examination begin, and an index of the exhibits, briefly describing their nature and giving the pages at which they are introduced and offered in evidence.

(h) *Depositions must be filed.* All depositions which are taken must be duly filed in the Patent and Trademark Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

(i) *Inspection of depositions.* After the depositions are filed in the Office, they may be inspected by any party to the case, but they cannot be withdrawn for the purpose of printing. They may be printed by someone specially designated by the Office for that purpose, under proper restrictions.

(j) *Effect of errors and irregularities in depositions.* Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon the party became aware of the ground of objection, he gave notice thereof. Rule 32(d)(1), (2), and (3)(a) and (b) of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions.

(k) *Objections to admissibility.* Subject to the provisions of paragraph (j) of this section, objection may be made to receiving in evidence any deposition or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence according to the established rules of evidence, which will be applied strictly by the Office.

(l) *Evidence not considered.* Evidence not obtained and filed in compliance with these sections will not be considered.

[37 FR 7607, Apr. 18, 1972, as amended at 41 FR 760, Jan. 5, 1976]

§ 2.124 Testimony by depositions upon written questions.

(a) A party may take the testimony of a witness by written questions to be propounded by an officer before whom depositions may be taken. See Rule 28 of the Federal Rules of Civil Procedure. The questions shall be served upon the other party within 10 days after the opening date set for taking the testimony of the party submitting the questions, together with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross questions upon the party proposing to take the deposition. Within 5 days thereafter, the latter may serve redirect questions upon a party who has served cross questions. Within 3 days after being served with redirect questions a party may serve recross questions upon the party proposing to take the depositions. Written objections to questions may be served on the party propounding the questions, and in response thereto substitute questions may be served, within 3 days.

(b) A copy of the notice and copies of all questions served shall be delivered by the party taking the testimony to the officer designated in the notice, who shall proceed to take the testimony of the witness in response to the questions and to prepare each answer immediately preceded by its corresponding question, then certify, and file the deposition, attaching thereto the copy of the notice and the questions received by him. Such depositions are subject to the same rulings for filing and serving copies as other depositions.

(c) On motion made within ten days after service of the notice and written questions, it may be ordered, for good cause shown, that the testimony be not taken in accordance with this section but by oral examination of the witness.

(d) Testimony in foreign countries shall be taken only by depositions upon written questions unless the parties stipulate otherwise in writing. Rule 28(b) of the Federal Rules of Civil Procedure shall apply to the taking of testimony in foreign countries.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 7608, Apr. 18, 1972]

§ 2.125 Copies of testimony.

(a) One copy of the transcript of testimony (taken in accordance with § 2.123(e) through (h) or § 2.124), together with copies of documentary exhibits, shall be served on each adverse party within 30 days after completion of the taking of such testimony. The certified transcript and exhibits and one copy of the transcript shall be filed in the Patent and Trademark Office as promptly as possible.

(b) Each transcript and the copies thereof shall comply with § 2.123(g) as to arrangement, indexing and form.

[37 FR 7608, Apr. 18, 1972]

§ 2.126 Allegations in application not evidence on behalf of applicant.

The allegation of dates of use in the application for registration of the applicant or registrant cannot be used as evidence in behalf of the party making the same nor are exhibits attached to pleadings, or specimens in application and registration files, considered as evidence of use on behalf of the party who filed them, unless identified and introduced in evidence as other exhibits.

§ 2.127 Motions.

(a) Motions shall be made in writing and shall contain a full statement of the grounds therefor. Any brief or memorandum in support of a motion shall accompany or be embodied in the motion. Briefs in opposition to a motion shall be filed within 15 days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended on request. Where a party fails to file a brief in opposition to a motion, the Trademark Trial and Appeal Board may treat the motion as conceded. Oral hearings will not be held on motions except on order of the Trademark Trial and Appeal Board.

(b) Any request for rehearing or reconsideration, or modification of a decision, on a motion which is not finally dispositive of the case, must be filed within thirty days from the date thereof. Any brief in opposition shall be filed within fifteen days after service of the request.

(c) Interlocutory motions, requests, and other matters not finally determinative in the proceeding may be acted upon by a member of the Trademark Trial and Appeal Board.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 7608, Apr. 18, 1972; 41 FR 760, Jan. 5, 1976]

§ 2.128 Final hearing and briefs.

(a) The brief of a party in the position of plaintiff shall be filed not later than sixty days after the closing date set for rebuttal testimony; the brief of a party in the position of defendant not later than thirty days after the due date of the first brief; a reply brief by a party in the position of plaintiff, if filed, shall be due fifteen days after the due date of the brief to which it is a reply. Three copies of all briefs should be filed.

(b) Briefs shall be submitted in typewritten or printed form, double spaced on letter or legal size paper. Without leave of the Trademark Trial and Appeal Board, no brief shall contain more than 50 pages of argument and, in case of the reply brief, the entire brief shall not exceed 25 pages. Each brief shall contain an alphabetical index of cases therein.

(c) If a party desires an oral hearing, he should so state by a separate notice filed not later than ten days after the due date of the reply brief of the party in position of plaintiff, and the time for such hearing will be set in a notice sent to each party by the Office. If no request for oral hearing is made, the case will be decided on the record and briefs.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 7608, Apr. 18, 1972]

§ 2.129 Oral arguments and reconsideration.

(a) Oral arguments will be heard by at least three members of the Trademark Trial and Appeal Board at the time stated in the notice. If any party appears at the specified time, he will be heard. If the Board is prevented from hearing the case at the time specified, a new assignment will be made, or the case will be continued from day to day until heard. Unless otherwise permitted, oral arguments will be limited to one-half hour for each party.

(b) Hearings may be advanced or adjourned, as far as is convenient and proper, to meet the wishes of the parties and their attorneys or other authorized representatives.

(c) Any request for rehearing or reconsideration, or modification of a decision, including a decision on a motion which is finally dispositive of a case, must be filed within thirty days from the date thereof. Any brief in opposition shall be filed within fifteen days after service of the request. The times specified herein may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 7608, Apr. 18, 1972; 41 FR 760, Jan. 5, 1976]

§ 2.130 New matter suggested by Examiner of Trademarks.

If, during the pendency of an inter partes case, facts appear which, in the opinion of the Examiner of Trademarks, render the mark of any applicant involved unregistrable, the attention of the Trademark Trial and Appeal Board shall be called thereto. The Board may suspend the proceeding and refer the application to the Examiner of Trademarks for his determination of the question of registrability, following the final determination of which the application shall be returned to the Board for such further inter partes action as may be appropriate. The consideration of such facts by the Examiner of Trademarks shall be ex parte, but a copy of the action of the examiner will be furnished to the parties to the inter partes proceeding.

§ 2.131 Ex parte matter in an inter partes case.

If, in considering an inter partes case involving an application, facts appear which, in the opinion of the Trademark Trial and Appeal Board, render the mark of the applicant unregistrable on one or more ex parte grounds, the Board shall in its decision on the inter partes issues in the case recommend that if the applicant finally prevails in the case, registration be withheld pending a reexamination by the Examiner of Trademarks of the application in the light of such facts. If, upon such reexamination following termination of the inter partes case, the Examiner of Trademarks finally refuses registration to applicant, appeal may be taken as provided in §§ 2.141 and 2.142.

§ 2.132 Failure to take testimony.

(a) Upon the filing of a statement by any party in the position of defendant, that the time for taking testimony on behalf of any party in the position of plaintiff has expired and that no testimony has been taken by him and no other evidence offered, an order may be entered that such party show cause within a time set therein, not less than ten days, why judgment should not be rendered against him, and in the absence of a showing of good and sufficient cause judgment may be rendered as by default.

(b) If no evidence other than Patent and Trademark Office records is offered by the party in the position of plaintiff, any party in position of defendant, without waiving his right to offer evidence in the event the motion is denied, may move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall be allowed fifteen days after service of the motion to file his argument in opposition to the motion. Judgment may be rendered against the party in position of plaintiff, or the Trademark Trial and Appeal Board may decline to render judgment until all the evidence is in. In the latter event, testimony periods will be reset for the party in position of defendant and for rebuttal.

§ 2.133 Amendment of application or registration during proceedings.

An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.

§ 2.134 Surrender or cancellation of registration.

If a registrant involved in a proceeding applies to cancel his registration under section 7(d) of the Act without first obtaining the written consent thereto of the adverse party, judgment shall be entered against him.

§ 2.135 Abandonment of application or mark.

If, in a proceeding, an applicant files a written abandonment of the application or of the mark without the consent thereto of the adverse party, judgment shall be entered against such applicant.

§ 2.136 Status of application on termination of proceeding.

On termination of a proceeding involving an application, the application, if the judgment is not adverse, returns to the status it had before the institution of the proceedings. If the judgment is adverse to the applicant, the application stands refused without further action and all proceedings thereon are considered terminated.

APPEALS

§ 2.141 Ex parte appeals from the Examiner of Trademarks.

Every applicant for the registration of a mark may, upon final refusal by the Examiner of Trademarks, appeal to the Trademark Trial and Appeal Board upon payment of the prescribed fee for each class in the application for which an appeal is taken. An appeal which includes insufficient fees to cover all classes in the application should specify the particular class or classes in which an appeal is taken. A second refusal on the same grounds may be considered as final by the applicant for purpose of appeal.

[41 FR 760, Jan. 5, 1976]

§ 2.142 Time and manner of ex parte appeals.

(a) Such appeal must be taken within six months from the date of final refusal or from the date of the action from which appeal is taken. Appeal is taken simply by filing a notice of appeal and payment of the appeal fee.

(b) The appellant's brief shall be filed within sixty days after the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to appellant's brief, supplying a copy to the appellant. The appellant may file a reply brief within twenty days from the date of such answer.

(c) If the appellant desires an oral hearing, he should so state by a separate notice filed not later than his brief; and due notice of the time for such hearing will be given. Oral argument will be limited to one-half hour unless otherwise permitted. If no request for oral hearing is made, the appeal will be considered on brief.

(d) Applications which have been considered and decided on appeal will not be reopened except by order of the Commissioner, and then only for consideration of matters not already adjudicated, sufficient cause being shown.

§ 2.144 Reconsideration of decision on ex parte appeal.

Any request for rehearing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the decision. Such time may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

[41 FR 760, Jan. 5, 1976]

§ 2.145 Appeal to court and civil action.

(a) *Appeal to U.S. Court of Customs and Patent Appeals.* An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit or declaration under section 8 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Commissioner (§§ 2.165, 2.184), may appeal to the U.S. Court of Customs and Patent Appeals. The appellant must take the following steps in such an appeal: (1) In the Patent and Trademark Office give written notice of appeal to the Commissioner (see paragraphs (b) and (d) of this section); (2) In the court, file a petition of appeal and a certified transcript of the record within a specified time after filing the appeal, and pay the fee for appeal, as provided by the rules of the Court. The transcript will be transmitted to the Court by the Patent and Trademark Office on order of and at the expense of the appellant. Such order should be filed with the notice of appeal, but in no case should it be filed later than fifteen days thereafter.

(b) *Notice of appeal.* (1) When an appeal is taken to the U.S. Court of Customs and Patent Appeals, the appellant shall give notice thereof in writing to the Commissioner, which notice shall be filed in the Patent and Trademark Office, within the time specified in paragraph (d) of this section. The notice shall specify the party or parties taking the appeal and shall designate the decision or part thereof appealed from.

(2) In inter partes proceedings, the notice must be served as provided in § 2.119.

(c) *Civil action.* (1) Any person who may appeal to the U.S. Court of Customs and Patent Appeals (paragraph (a) of this section), may have remedy by civil action under section 21(b) of the Act. Such civil action must be commenced within the time specified in paragraph (d) of this section.

(2) If an applicant or registrant in an ex parte case has taken an appeal to the U.S. Court of Customs and Patent Appeals, he thereby waives his right to proceed under section 21(b) of the Act.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals, and any adverse party to the case shall, within 20 days after the appellant shall have filed notice of the appeal to the court (paragraph (b) of this section), file notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) of the Act, certified copies of such notices will be transmitted to the U.S. Court of Customs and Patent Appeals for such action may be necessary. The notice of election must be served as provided in § 2.119.

(d) *Time for appeal or civil action.* (1) The time for filing the notice of appeal to the U.S. Court of Customs and Patent Appeals (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is sixty days from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearing or reconsideration, or modification of the decision, is filed within the time specified in § 2.129(c) or § 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire at the end of the sixty day period or thirty days after action on the request, whichever is later. The sixty and thirty day periods may be extended by the Commissioner upon a showing of sufficient cause.

(2) The times specified herein are calendar days. If the last day of time specified for appeal, or commencing a civil action fails on a Saturday, Sunday or legal holiday, the time is extended to the next day which is neither a Saturday, Sunday nor a holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals and an adverse party has filed notice under section 21(a)(1) of the Act that he elects to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act.

[37 FR 9476, May 11, 1972, as amended at 41 FR 761, Jan. 5, 1976; 41 FR 16147, Apr. 16, 1976]

PETITIONS AND ACTION BY THE COMMISSIONER

§ 2.146 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any repeated action or requirement of the Examiner of Trademarks, not subject to appeal under § 2.141, in the ex parte prosecution of an application; (2) in cases in which the statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Any brief in support thereof should accompany or be embodied in the petition; in contested cases any brief in opposition shall be filed within fifteen days after service of the petition. Where facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20 (and exhibits, if any) must accompany the petition.

(c) An oral hearing will not be held except when considered necessary by the Commissioner.

(d) The mere filing of a petition will not stay the period for replying to an examiner's action, nor stay other proceedings.

(e) Authority to act on a petition may, when appropriate, be delegated by the Commissioner.

(f) No fee is required for a petition to the Commissioner.

§ 2.147 Cases not specifically defined.

All cases not specifically defined and provided for by the rules in this part will be decided in accordance with the merits of each case under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

§ 2.148 Commissioner may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in this part not being a requirement of the statute may be suspended or waived by the Commissioner.

CERTIFICATE

§ 2.151 Certificate.

When the requirements of the law and of the rules have been complied with, and the Patent and Trademark Office has adjudged a mark registrable, a certificate will be issued to the effect that the applicant has complied with the law and that he is entitled to registration of his mark on the Principal Register or on the Supplemental Register, as the case may be. The certificate will state the date on which the application for registration was filed in the Patent and Trademark

Office, the act under which the mark is registered, the date of issue and the number of the certificate. Attached to the certificate and forming a part thereof will be a reproduction of the mark and pertinent data from the application. A notice of the affidavit or declaration requirements of section 8(a) of the Act (§ 2.161) will be printed on the certificate.

PUBLICATION OF MARKS REGISTERED UNDER 1905 ACT

AUTHORITY: Secs. 2.152 to 2.156 also issued under sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

§ 2.152 Publication requirements.

A registrant of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with § 2.20 setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946.

[31 FR 5262, Apr. 1, 1966]

§ 2.154 Publication in Official Gazette.

A notice of the claim of benefits under the Act of 1946 and a reproduction of the mark will then be published in the *Official Gazette* as soon as practicable. The published mark will retain its original registration number.

§ 2.155 Notice of publication.

A notice of such publication of the mark and of the requirement for the affidavit or declaration specified in section 8(b) of the Act (§ 2.161) will be sent to the registrant.

§ 2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition on such publication in the *Official Gazette*, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit or declaration specified in § 2.161.

REREGISTRATION OF MARKS REGISTERED UNDER PRIOR ACTS

§ 2.158 Reregistration of marks registered under Acts of 1881, 1905, and 1920.

Trademarks registered under the Act of 1881, the Act of 1905 or the Act of [illegible] may be reregistered under the Act of 1946, either on the Principal Register, if eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the Act of 1946. See § 2.26 for use of old drawing.

CANCELLATION FOR FAILURE TO FILE AFFIDAVIT OR DECLARATION DURING SIXTH YEAR

AUTHORITY: Secs. 2.161 to 2.165 also issued under sec. 8, 60 Stat. 431; 15 U.S.C. 1058.

§ 2.161 Cancellation for failure to file affidavit or declaration during sixth year.

Any registration under the provisions of the Act of 1946 and any registration published under the provisions of section 12(c) of the Act (§ 2.153) shall be cancelled as to any class in the registration at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit or declaration in accordance with § 2.20 showing that said mark is still in use as to such class or showing that its nonuse as to such class is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

[41 FR 761, Jan. 5, 1976]

§ 2.162 Requirements for affidavit or declaration during sixth year.

The affidavit or declaration required by § 2.161 must:

(a) Be executed by the registrant after expiration of the five-year period following the date of registration or of publication under section 12(c) of the Act;

(b) Be filed in the Patent and Trademark Office before the expiration of the sixth year following the date of registration or of publication under section 12(c) of the Act;

(c) Identify the certificate of registration by the registration number and date of registration;

(d) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed before the expiration of the sixth year following the date of registration or of publication under sec. 12(c) of the Act, the affidavit or declaration will not be refused if the required fee(s) and service charge (see § 2.6(g)) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. In situations where a notice of deficiency is sent because no fee, or a fee insufficient to cover at least one class, is filed, § 2.83(e) may not be utilized. If insufficient fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified;

(e) State that the registered mark is in use (except under paragraph (f) of this section). The statement must be supported by evidence which shows that the mark is still in use, and normally such evidence consists of a specimen or a facsimile specimen which is currently in use, or a statement of facts concerning use. The supporting evidence should be submitted with the affidavit or declaration, but if it is not or if the evidence submitted is found to be deficient, the evidence, or further evidence, may be submitted and considered even though filed after the sixth year has expired;

(f) If the registered mark is not still in use, recite facts to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. If the facts recited are found not to be sufficient, further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use or statement as to nonuse and appropriate evidence in support thereof, as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in the registration.

[41 FR 761, Jan. 5, 1976, as amended at 43 FR 35485, Aug. 10, 1978]

§ 2.163 Notice to registrant.

If no affidavit or declaration is filed within a reasonable time prior to expiration of the sixth year, the registrant may be notified that the registration will be cancelled by the Commissioner at the end of such sixth year unless the owner files in the Patent and Trademark Office the affidavit or declaration of use or excusable nonuse required by section 8. Failure to notify the registrant does not, however, relieve the registrant of the responsibility of filing the affidavit or declaration within the period required by statute.

§ 2.164 Acknowledgment of receipt of affidavit or declaration.

The registrant will be notified by the Examiner of Trademarks of the receipt of the affidavit or declaration and, if satisfactory, of its acceptance.

§ 2.165 Reconsideration of affidavit or declaration.

(a) If the affidavit or declaration is insufficient, the registrant will be notified of the reasons by the examiner. Reconsideration of such refusal may be requested within six months from the date of the mailing of the notice. The request for reconsideration must state the reasons therefor; a supplemental or substitute affidavit or declaration required by section 8 of the Act cannot be considered unless it is received before the expiration of six years from the date of the registration, or from the date of publication under section 12(c).

(b) If the registrant is dissatisfied with the action of the examiner holding the affidavit or declaration insufficient, he may request the Commissioner to review the action under § 2.146. The decision of the Commissioner on such a request constitutes the final action of the Patent and Trademark Office. If there is no review by the Commissioner, the Commissioner will notify the registrant of the insufficiency of the affidavit or declaration after the expiration of the sixth year, which notice will constitute such final action. See § 2.145 for appeal to or review by court.

§ 2.166 Time of cancellation.

If no affidavit or declaration is filed within the sixth year following registration or publication under section 12(c) of the Act, the registration will be cancelled forthwith by the Commissioner. If the affidavit or declaration is filed but is refused, cancellation of the registration will be withheld pending further proceedings.

AFFIDAVIT OR DECLARATION UNDER SECTION 15

§ 2.167 Affidavit or declaration under section 15.

The affidavit or declaration in accordance with § 2.20 provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12(c) of the Act (§ 2.153) must:

(a) Be signed by the registrant;

(b) Identify the certificate of registration by the certificate number and date of registration;

(c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years subsequent to the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce, specifying the nature of such commerce;

(d) Specify that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;

(e) Specify that there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of;

(f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c).

The registrant will be notified of the receipt of the affidavit or declaration.

(Sec. 15, 60 Stat. 433; 15 U.S.C. 1065)

§ 2.168 Combined with other affidavits or declarations.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, provided it also complies with the requirements and is filed within the time limit specified in §§ 2.161 and 2.162.

(b) In appropriate circumstances the affidavit or declaration filed under section 15 of the Act may be combined with the affidavit or declaration required for renewal of a registration (see § 2.183).

CORRECTION, DISCLAIMER, SURRENDER, ETC.

§ 2.171 New certificate on change of ownership.

In case of change of ownership of a registered mark, upon request of the assignee, a new certificate of registration may be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Patent and Trademark Office, and the request for the new certificate must be signed by the assignee and accompanied by the required fee. The original certificate of registration, if available, must also be submitted.

(Sec. 7, 60 Stat. 430 as amended; 15 U.S.C. 1057)

[31 FR 5262, Apr. 1, 1966]

§ 2.172 Surrender for cancellation.

Upon application by the registrant, the Commissioner may permit any registration to be surrendered for cancellation. Application for such action must be signed by the registrant and must be accompanied by the original certificate of registration, if not lost or destroyed. When there is more than one class in a registration, one or more entire class but less than the total number of classes may be surrendered as to the specified class or classes. Deletion of less than all of the goods or services in a single class constitutes amendment of registration as to that class (see § 2.173).

(Sec. 7, 60 Stat. 430 as amended; 15 U.S.C. 1057)

[41 FR 761, Jan. 6, 1976]

§ 2.173 Amendment and disclaimer in part.

(a) Upon application by the registrant, the Commissioner may permit any registration to be amended or any registered mark to be disclaimed in part. Application for such action must specify the amendment or disclaimer and be signed by the registrant and verified or include a declaration in accordance with § 2.20, and must be accompanied by the required fee. If the amendment involves a change in the mark, new specimens showing the mark as used in connection with the goods or services, and a new drawing of the amended mark must be submitted. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon and in the records of the Office. The registration when so amended must still contain registrable matter and the mark as amended must be registrable as a whole, and such amendment or disclaimer must not involve such changes in the registration as to alter materially the character of the mark.

(b) Changes in the identification of goods other than in the nature of deletions will not be permitted except under the provisions of § 2.175. No amendment seeking the elimination of a disclaimer will be permitted.

(c) A printed copy of the amendment or disclaimer shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430, as amended; 15 U.S.C. 1057)

[30 FR 13193, Oct. 16, 1965, as amended at 31 FR 5262, Apr. 1, 1966]

§ 2.174 Correction of office mistake.

Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake, signed by the Commissioner or by an employee designated by the Commissioner and sealed with the seal of the Patent and Trademark Office, shall be issued without charge and recorded, and a printed copy thereof shall be attached to each printed copy of the registration certificate. Such corrected certificate shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must be submitted in order that the Commissioner may make appropriate entry thereon.

(Sec. 7, 60 Stat. 430, as amended; 15 U.S.C. 1057)

§ 2.175 Correction of mistake by registrant.

(a) Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner may issue a certificate of correction, or in his discretion, a new certificate upon the payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) Application for such action must specify the mistake for which correction is sought and the manner in which it arose, show that it occurred in good faith, be signed by the applicant and verified or include a declaration in accordance with § 2.20, and be accompanied by the required fee. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon.

(c) A printed copy of the certificate of correction shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430, as amended; 15 U.S.C. 1057)

[30 FR 13193, Oct. 16, 1965, as amended at 31 FR 5262, Apr. 1, 1966]

§ 2.176 Consideration of above matters.

The matters in §§ 2.171 to 2.175 will be considered in the first instance by the Examiner of Trademarks. If the action of the Examiner of Trademarks is adverse, registrant may request the Commissioner to review the action under § 2.146. If response to an adverse action of the Examiner is not made by the registrant within six months, the matter will be considered abandoned.

TERM AND RENEWAL

AUTHORITY: Secs. 2.181 to 2.184 also issued under sec. 9, 60 Stat. 431; 15 U.S.C. 1059.

§ 2.181 Term of original registrations and renewals.

(a) Registrations issued under the Act of 1946, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years, and may be renewed for periods of twenty years from the expiring period unless previously cancelled or surrendered.

(b) Registrations issued under the Acts of 1905 and 1881 remain in force for their unexpired terms and may be renewed in the same manner as registrations under the Act of 1946.

(c) Registrations issued under the Act of 1920 cannot be renewed unless renewal is required to support foreign registrations and in such case may be renewed on the Supplemental Register in the same manner as registrations under the Act of 1946.

§ 2.182 Period within which application for renewal must be filed.

An application for renewal may be filed by the registrant at any time within six months before the expiration of the period for which the certificate of registration was issued or renewed, or it may be filed within three months after such expiration on payment of the additional fee required.

§ 2.183 Requirements of application for renewal.

(a) The application for renewal must include a statement which is verified or which includes a declaration in accordance with § 2.20 by the registrant setting forth the goods or services recited in each class for which renewal is sought in the registration on or in connection with which the mark is still in use in commerce, specifying the nature of such commerce (except under paragraph (c) of this section). This statement must be executed not more than six months before the expiration of the registration and must:

(1) Be accompanied by a specimen or facsimile specimen for each class for which renewal is sought in the registration showing current use of the mark.

(2) Include the required fee for each class for which renewal is sought in the registration, and an additional fee for each class in the case of a delayed application for renewal. If the application for renewal includes insufficient fees to cover all classes in the registration, the particular class or classes for which renewal is sought should be specified.

(b) The declaration or verified statement, specimen or facsimile specimen and the fee for each class for which renewal is sought in the registration must be filed within the period prescribed for applying for renewal. If defective or insufficient, they cannot be completed after the period for applying for renewal has passed; if completed after the initial six month period has expired but before the expiration of the three month delay period, the application can be considered only as a delayed application for renewal.

(c) If the mark is not in use in commerce at the time of filing of the declaration or verified statement as to any class for which renewal is sought, facts must be recited to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. There must be a recitation of facts as to nonuse for each class for which renewal is sought or it must be clear that the facts recited apply to each class sought to be renewed. If the facts recited require amplification, or explanation, in order to show excusable nonuse, further evidence may be submitted and considered even though filed after the period for applying for renewal has passed.

(d) If the applicant is not domiciled in the United States, the application for renewal must include the designation of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark.

(e) If the mark is registered under the Act of 1920, the application for renewal must include a showing which is verified or which includes a declaration in accordance with § 2.20 that renewal is required to support foreign registrations.

[30 FR 13193, Oct. 16, 1965, as amended at 31 FR 5262, Apr. 1, 1966; 41 FR 761, Jan. 5, 1976]

§ 2.184 Refusal of renewal.

(a) If the application for renewal is incomplete or defective, the renewal will be refused by the Examiner of Trademarks. The application may be completed or amended in response to a refusal, subject to the provisions of §§ 2.62 and 2.183.

(b) If the registrant is dissatisfied with the action of the examiner considering the application for renewal incomplete or defective, he may request the Commissioner to review the action under § 2.146. If response to an adverse action of the examiner is not made within six months, the application for renewal will be considered abandoned.

ASSIGNMENT OF MARKS

§ 2.185 Requirements for assignments.

(a) Assignments under section 10 of the act of registered marks, or marks for which an application for registration has been filed, will be recorded in the Patent and Trademark Office. Other instruments which may relate to such marks may be recorded in the discretion of the Commissioner. No assignment will be recorded, except as may be ordered by the Commissioner, unless it has been executed and unless:

(1) The certificate of registration is identified in the assignment by the certificate number (the date of registration should also be given), or, the application for registration shall have been first filed in the Patent and Trademark Office and the application is identified in the assignment by serial number (the date of filing should also be given);

(2) It is in the English language or, if not in the English language, accompanied by a translation signed by the translator;

(3) The fee for recording is received; and

(4) A designation of a domestic representative is made in case the assignee is not domiciled in the United States. The designation must be separate from the assignment and there must be a separate designation for each registration or application assigned in one instrument.

(b) The address of the assignee should be recited in the assignment, otherwise it must be given in a separate paper.

(c) The date of record of the assignment is the date of the receipt of the assignment at the Patent and Trademark Office in proper form and accompanied by the full fee for recording.

(Sec. 3, 79 Stat. 260, sec. 10, 60 Stat. 431; 15 U.S.C. 113, 1060)

[30 FR 13193, Oct. 16, 1965, as amended at 41 FR 762, Jan. 5, 1976]

§ 2.186 Action may be taken by assignee of record.

Any action which may or must be taken by a registrant or applicant may be taken by the assignee, provided the assignment has been recorded.

§ 2.187 Certificate of registration may issue to assignee.

The certificate of registration may be issued to the assignee of the applicant, or in a new name of applicant, and certificate of registration will be so issued provided an appropriate document is of record in the Assignment Division of the Patent and Trademark Office no later than the time the notice of publication is mailed, or if such document is not of record, then if a statement that such document has been filed for recordation is in the application file by the time the application is being prepared for issuance of the certificate of registration. The address of the assignee must be made of record in the application file or in the recorded document.

[41 FR 762, Jan. 5, 1976]

AMENDMENT OF RULES

§ 2.189 Amendments to rules.

(a) All amendments to this part will be published in the *Official Gazette* and in the FEDERAL REGISTER.

(b) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the FEDERAL REGISTER and in the *Official Gazette*. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof. Oral hearings may be held at the discretion of the Commissioner.

PART 3—FORMS FOR PATENT CASES

CODIFICATION NOTE: Part 3 is placed in a separate grouping of parts pertaining to patents. It appears on page 91 of this volume.

PART 4—FORMS FOR TRADEMARK CASES

Sec.
4.1 Trademark application by an individual; Principal Register with oath.
4.1a Trademark application by an individual; Principal Register with declaration.
4.2 Power of attorney at law (which may accompany application).
4.4 Designation of domestic representative to accompany application. (9)
4.5 Trademark application by a partnership; Principal Register.
4.6 Trademark application by a corporation; Principal Register.
4.7 Service mark application; Principal Register.
4.8 Collective mark application (including collective membership mark); Principal Register.
4.9 Certification mark application; Principal Register.
4.10 Application based on concurrent use; Principal Register.
4.11 Application to register on Supplemental Register.
4.13 Application for renewal.
4.14 Affidavit for publication under section 12(c).
4.15 Affidavit required by section 8.
4.16 Affidavit under section 15.
4.16a (Combined 8 and 15) Combined affidavit under sections 8 and 15.
4.17 Opposition in the United States Patent and Trademark Office.
4.18 Petition to cancel a registration in the United States Patent and Trademark Office.
4.19 Ex parte appeal from Examiner of Trademarks in the United States Patent and Trademark Office.
4.21 Assignment of application.
4.22 Assignment of registration.
4.23 A suggested format for the certificate of mailing under 37 CFR 1.8(a) to be included with the correspondence.

AUTHORITY: Secs. 1, 2, 7, 9, 12, 13, 14, 21, 23, 30, 44, 45, 60 Stat. 427, as amended; sec. 41, 60 Stat. 440; sec. 6, 66 Stat. 793; 15 U.S.C. 1051, 1052, 1057, 1059, 1062, 1063, 1064, 1071, 1091, 1112, 1123, 1126, 1127; 35 U.S.C. 6, unless otherwise noted.

SOURCE: 41 FR 17727, Apr. 28, 1976, unless otherwise noted.

NOTE: The following forms illustrate the manner of preparing applications for registration of marks as well as various other papers to be filed in the Patent and Trademark Office in trademark cases. Applicants and other parties will find their business facilitated by following them. These forms should be used in cases to which they are applicable. A sufficient number of representative forms are given which, with the variations indicated by the notes, should take care of all the usual situations. In special situations such alterations as the circumstances render necessary may be made provided they do not depart from the requirements of Part 2 of this chapter or of the Trademark Statute. Before using any forms, the pertinent requirements of Part 2 of this chapter and the pertinent sections of the trademark statute should be studied carefully.

In using these forms, the applicant or other party filing the form may, instead of making oath or verification where such is prescribed in the forms, set forth a written declaration that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true, but this may be done only if declarant is warned by wording in the same paper that willful false statements and the like are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or other document or any registration resulting from the application: See form 4.1a.

§ 4.1 Trademark application by an individual; Principal Register with oath.

Mark ————————————————————
(Identify the mark)

Class No.——————————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

——————————————————————
(Name of applicant, and business trade name, if any)

——————————————————————
(Business address)

——————————————————————
(Residence address)

——————————————————————
(Citizenship of applicant)

The above identified applicant has adopted and is using the trademark shown in the accompanying drawing (1) for the following goods:

——————————————————————

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used on the goods (2) on ————(Date); was first used in ———— (Type of commerce) commerce (3) on ————(Date); and is now in use in such commerce.

(4)

The mark is used by applying it to (5) ———————— and five specimens showing the mark as actually used are presented herewith.

(6)

State of ————————} ss.
County of ————————}

——————————————————————
(Name of applicant)

states that he/she believes himself/herself to be the owner of the trademark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true.

——————————————————————
(Signature of applicant)

JURAT:

Subscribed and sworn to before me, this —— day of ————, ——.

[*] ——————————————————————
Notary Public

REPRESENTATION

(See form 4.2 and Note (7) below.)

NOTES

(1) If registration is sought for a word or numeral mark not depicted in any special form, the drawing may be the mark typed in capital letters on letter-size bond paper; otherwise, the drawing shall comply with section 2.52.

(2) If more than one item in a class is set forth and the dates given for that class apply to only one of the items listed, insert the name of the item to which the dates apply.

(3) Type of commerce should be specified as "interstate," "territorial," "foreign," or other type of commerce which may lawfully be regulated by Congress. Foreign applicants relying upon use must specify commerce which Congress may regulate, using wording such as commerce with the United States or commerce between the United States and a foreign country.

(4) If the mark is other than a coined, arbitrary or fanciful mark, and the mark is believed to have acquired a secondary meaning, insert whichever of the following paragraphs is applicable:

(a) The mark has become distinctive of applicant's goods as a result of substantially exclusive and continuous use in ———— (Type of commerce) commerce for the five years next preceding the date of filing of this application.

(b) The mark has become distinctive of applicant's goods as evidenced by the showing submitted separately.

(5) Insert the manner or method of using the mark with the goods, i.e., "the goods," "the containers for the goods," "displays associated with the goods," "tags or labels affixed to the goods," or other method which may be in use.

(6) The required fee of $35.00 for each class must be submitted.

(7) If the applicant is not domiciled in the United States, a domestic representative must be designated. See form 4.4.

[43 FR 55396, Nov. 28, 1978]

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[*] The person who signs the jurat must be authorized to administer oaths by the law of the jurisdiction where executed, and the seal or stamp of the notary, or other evidence of authority in the jurisdiction of execution, must be affixed.

§ 4.1a Trademark application by an individual; Principal Register with declaration.

Mark ————————————————
(Identify the mark)

Class No. ————————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

————————————————
(Name of applicant, and business trade name, if any)

————————————————
(Business address)

————————————————
(Residence address)

————————————————
(Citizenship of applicant)

The above identified applicant has adopted and is using the trademark shown in the accompanying drawing (1) for the following goods:

————————————————

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used on the goods (2) on ———— (Date) was first used in ———— (Type of commerce) commerce (3) on ———— (Date) and is now in use in such commerce.

(4)

The mark is used by applying it to (5) ———————— and five specimens showing the mark as actually used are presented herewith.

(6)

————————————————
(Name of applicant)

being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares: That he/she believes himself/herself to be the owner of the trademark sought to be registered; that to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that the facts set forth in this application are true; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

————————————————
(Signature of applicant)

————————————————
(Date)

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTES

For Notes referred to in this form but not set out here, see same numbered Notes under form 4.1.

[43 FR 55397, Nov. 28, 1978]

§ 4.2 Power of attorney at law (which may accompany application).*

Applicant hereby appoints (8) ————, ———— (Address) an attorney at law or attorneys at law, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

NOTE: (8) An individual attorney at law or individual attorneys at law must be named here. If the name of a law firm is given, it will be regarded merely as a designation of address for correspondence.

[43 FR 55397, Nov. 28, 1978]

§ 4.4 Designation of domestic representative to accompany application. (9)

———————————— (name of representative), whose postal address is———————— (street, city and State), is hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

NOTE: (9) The designation of a domestic representative must be separate from a power of attorney at law or other authorization of representation.

§ 4.5 Trademark application by a partnership; Principal Register.

Mark ————————————————
(Identify the mark)

---

*An attorney at law is not required to file a power of attorney; an attorney at law may represent a trademark applicant on the basis of being an attorney at law without presenting a power of attorney.

Class No. ————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

————————————————
(Name of partnership)

————————————————
(Names of partners)

————————————————
(Business address of partnership)

————————————————
(Citizenship of partners)

(Body of application is same as in form 4.1.)

State of ———————— }
County of ——————— } ss.

————————————————

(Name of partner) states that he/she is a partner of applicant partnership; he/she believes said partnership to be the owner of the trademark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true.

————————————————
(Signature of partner)

JURAT:
Subscribed and sworn to before me, this ——— day of ————, ——.
[*] ————————————————
Notary Public

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

[43 FR 55397, Nov. 28, 1978]

§ 4.6 Trademark application by a corporation; Principal Register.

Mark ————————————
(Identify the mark)
Class No.————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

————————————————
(Corporate name and State or country of incorporation) (10)

————————————————
(Business address)

(Body of application is same as in form 4.1.)

State of ———————— }
County of ——————— } ss.

————————————————

(Name of officer of corporation) states that he/she is ———————— (Official title) of applicant corporation and is authorized to execute this instrument on behalf of said corporation; he/she believes said corporation to be the owner of the trademark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true.

————————————————
(Name of corporation)
By ————————————————
(Signature of officer of corporation, and official title of officer)

JURAT:
Subscribed and sworn to before me, this ——— day of ————, ——.
————————————————
Notary Public

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTE: (10) If applicant is an association or other collective group, the word "association" or other appropriate designation should be substituted for "corporation" when referring to applicant.

[43 FR 55397, Nov. 28, 1978]

§ 4.7 Service mark application; Principal Register.

Mark ————————————
(Identify the mark)
Class No.————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

---

[*] The person who signs the jurat must be authorized to administer oaths by the law of the jurisdiction where executed, and the seal or stamp of the notary, or other evidence of authority in the jurisdiction of execution, must be affixed.

(Insert appropriate identification of applicant in accordance with form 4.1, 4.5, or 4.6.)

The above identified applicant has adopted and is using the service mark shown in the accompanying drawing (11) for the following services: ————————, and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The service mark was first used in connection with the services (2) on ———————— (Date); was first used in connection with the services rendered in (3) ———— (Type of commerce) commerce on ———————— (Date); and is now in use in such commerce. (4)

The mark is used by ————————————

————————————————————

(State method of using the mark in connection with the services)

and five (12) ———————— showing the mark as actually used are presented herewith.

(Insert appropriate verification of declaration from form 4.1, 4.1a, 4.5 or 4.6, changing the word "trademark" to "service mark" and the word "goods" to "services.")

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTES

For Notes referred to in this from but not set out here, see same numbered Notes under form 4.1.

(11) See Note (1) under form 4.1, and if drawing is not practicable, insert description of the mark instead of reference to the drawing.

(12) Insert "specimens," or state the nature of the representation of the mark which is furnished.

[43 FR 55398, Nov. 28, 1978]

§ 4.8 Collective mark application (including collective membership mark); Principal Register.

Mark ————————————————
(Identify the mark)

Class No. ————————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

(Insert identification of applicant in accordance with form 4.6.)

The above identified applicant has adopted and is exercising legitimate control over the use of the collective mark shown in the accompanying drawing (1) for (13) ———————— (Name the goods or services) to indicate (14) ————————, and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The collective mark was first used on the (2) ———————— (Insert "goods" or "services") (15) by members of applicant on ———————— (Date); was first used by said members in (3) ———————— (Type of commerce) commerce on ———————— (Date); and is now in use in such commerce. (4)

The mark is used by applying it to (16) ———————— and five specimens of the mark as actually used are presented herewith.

(Insert verification from form 4.6 or declaration from form 4.1a, changing the wording as necessary to agree with applicant's legal entity.)

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTES

For notes referred to in this form but not set out here, see same numbered Notes under form 4.1.

(13) If the application is for a membership mark, omit the word "for" and the space for the name of the goods or services.

(14) If the application is for a membership mark, insert "membership in applicant organization," or similar appropriate statement. If not for a membership mark, omit the words "to indicate" and the following space.

(15) If the application is for a membership mark, the phrase "on the goods or services" should be omitted.

(16) For goods, see Note (5); for services, see form 4.7; for membership, insert the manner or method of using the mark to indicate membership, such as, membership cards, wall plaques, or other method which may be in use.

[43 FR 55398, Nov. 28, 1978]

§ 4.9 Certification mark application; Principal Register.

Mark ————————————————
(Identify the mark)

Class No. ————————————————
(A, for Goods; B, for Services)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

(Insert appropriate identification of applicant in accordance with form 4.1, 4.5 or 4.6.)

The above identified applicant has adopted and is exercising legitimate control over the use of the certification mark shown in the accompanying drawing (1) for the following goods or services:

——————————————————

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The certification mark, as used by persons authorized by applicant, certifies (17) ——————————; said mark was first used under the authority of applicant on —————————— (Date); was first used in (3) —————————— (Type of commerce) commerce on —————————— (Date); and is now in use in such commerce. (4)

The mark is used by applying it to (5) (or see form 4.7) ————————, and five specimens showing the mark as actually used are presented herewith.

Applicant is not engaged in the production or marketing of any goods or services to which the mark is applied.

(Insert appropriate verification or declaration from form 4.1 4.1a, 4.5 or 4.6 and add after the word "association" the words "other than those authorized by applicant.")

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTES

For Notes referred to in this form but not set out here, see same numbered Notes under form 4.1.

(17) Insert an appropriate statement as to what the mark certifies, relating to regional origin, or to material, mode of manufacture, quality, accuracy or other characteristic of the goods or services, or that the work or labor on the goods or in rendering the services was performed by members of applicant.

[43 FR 55398, Nov. 28, 1978]

§ 4.10 Application based on concurrent use; Principal Register.

Mark ——————————————————
(Identify the mark)

Class No. ——————————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

(Insert appropriate identification of applicant in accordance with form 4.1, 4.5 or 4.6.)

Use body of form 4.1, 4.7 or 4.8, and add at the end of the first paragraph: "for the area comprising —————————— (List the States for which registration is sought)"; and add as final paragraph of application:

The following exception(s) to applicant's right to exclusive use are:

By ————————, doing business at ——————————, who is using the mark —————————— (Identify the mark and Reg. No. or Ser. No., if any) for the following goods (or services): —————————— in the States of —————————— by applying the mark to (16) ———————— from —————————— (Earliest known date of such use) to the present.

(Insert appropriate verification of declaration from form 4.1, 4.1a, 4.5 or 4.6 and add after the word "association" the words "other than specified in the application.")

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTES

For Notes referred to in this form but not set out here, see same numbered Notes under forms 4.1 and 4.8.

[43 FR 55398, Nov. 28, 1978]

§ 4.11 Application to register on Supplemental Register.

Mark ——————————————————
(Identify the mark)

Class No. ——————————————————
(If known)

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

(Insert appropriate identification of applicant in accordance with form 4.1, 4.5 or 4.6.)

For the body of an application for a trademark registration (18), use form 4.1, 4.5 or 4.6, whichever is appropriate, changing the word "Principal" to "Supplemental," and adding a final paragraph to the application as follows:

"The mark sought to be registered has been in lawful use in ———————— (Type of commerce) commerce in connection with the goods for the year preceding the date of filing of this application." (19)

(Insert appropriate verification or declaration from form 4.1, 4.1a, 4.5 or 4.6.)

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1.)

NOTES

(18) For the body of service mark, collective mark or certification mark applications on the Supplemental Register, use form 4.7, 4.8 or 4.9, whichever is applicable, with the change and addition indicated in this form.

(19) If the mark has not been in use for the year next preceding the filing date, and registration in the United States is required as a basis for obtaining foreign protection of the mark, substitute the following statement for the last sentence: The mark sought to be registered is now in use in ———————— (Type of commerce) commerce and domestic registration is required as a basis for foreign protection of the mark.

In this instance applicant will be required to make a showing that U.S. registration is required as a basis for foreign protection of the mark.

[43 FR 55399, Nov. 28, 1978]

§ 4.13 Application for renewal.

Mark ——————————————————

(Identify the mark)

Reg. No. ——————————————————

Class No.——————————————————

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

(Insert appropriate identification of applicant for renewal in accordance with form 4.1, 4.5 or 4.6.)(1)

The above identified applicant for renewal requests that the above identified registration, granted to ———————— (Name of original registrant) on ———————— (Date of Issuance): which applicant for renewal now owns, as shown by records in the Patent and Trademark Office, be renewed in accordance with the provisions of section 9 of the Act of July 5, 1946.

The mark shown in said registration is still in use in (2) ——————— (Type of commerce) commerce on each of the following goods (3) recited in the registration: ————————, (List the goods or services or insert the words "all the goods" or "all the services"), the attached specimen (or facsimile) showing the mark as currently used. (4)

(5)

State of ————————}
County of ————————} ss.

——————————————————

(Name of renewal applicant or of person authorized to sign for a juristic renewal applicant) states that to the best of his/her knowledge and belief the facts set forth in this application are true.

——————————————————

(Signature of renewal applicant; if renewal applicant is a corporation or other juristic organization, give the official title of the person who signs for renewal applicant)

(JURAT) (Use Jurat from form 4.1.)

REPRESENTATION

(See form 4.2 and Note (6) below.)

NOTES

(1) Applicant for renewal must be the present owner of the registration.

(2) Type of commerce should be specified as "interstate," "foreign," "territorial," or other type of commerce which may lawfully be regulated by Congress. Foreign registrants must specify commerce which Congress may regulate, using wording such as commerce with the United States or commerce between the United States and a foreign country.

(3) If a service mark registration, state "in connection with each of the following services * * *".

(4) If the mark is not in use in commerce at the time of filing the application for renewal, but there is no intention to abandon the mark, facts must be recited to show that the nonuse is due to special circumstances. A specimen (or facsimile) illustrating use, or facts as to nonuse, must be submitted for each class sought to be renewed.

(5) The required fee for renewal sought prior to expiration is $25.00 for each class; and for delayed renewal filed within three months after expiration, an additional $5.00 for each class. If renewal is sought for less than the total number of classes in the registration, the classes for which renewal is sought should be specified.

(6) If applicant for renewal is not domiciled in the United States, a domestic representative must be designated. See form 4.4. If a designation is not submitted with this form, a prior unrevoked designation will meet the requirement if such is already in the registration file.

[43 FR 55399, Nov. 28, 1978]

§ 4.14 Affidavit for publication under section 12(c).

Mark ——————————————————

(Identify the mark)

Reg. No. ——————————————————

Date of Issue ——————————————————

To: ——————————————————

(Name of original registrant)

State of ————————}
County of ————————} ss.

——————————————————

(Name of registrant or of person authorized to sign for a juristic registrant) states that (1) ———————— (Name of registrant) owns the above identified registration, as shown by records in the Patent and Trademark Office; that said registration is now in force; that the mark shown therein is in use in (2) ——————— (Type of commerce) commerce on each of the following goods stated in the registration:

———————— (List the goods or insert the words "all the goods") and that the benefits of the Act of July 5, 1946, are hereby claimed for said registration.

(3)

——————————————————

(Signature; if a corporation or other juristic organization, give the official title of the person who signs.)

(JURAT) (Use jurat from form 4.1.)

REPRESENTATION

(See form 4.2 and Note (4) below.)

NOTES

(1) The present owner of the registration must file the affidavit as registrant.

(2) Type of commerce should be specified as "interstate," "territorial," "foreign," or other type of commerce which may lawfully be regulated by Congress. Foreign registrants must specify commerce which Congress may regulate, using wording such as commerce with the United States or commerce between the United States and a foreign country.

(3) The required fee of $10.00 must be submitted.

(4) If registrant is not domiciled in the United States, a domestic representative must be designated. See form 4.4. If a designation is not submitted with this form, a prior unrevoked designation will meet the requirement if such is already in the registration file.

[43 FR 55399, Nov. 28, 1978]

§ 4.15 Affidavit required by section 8.

Mark ————————————————————

(Identify the mark)

Reg. No. ————————————————————

Class No. ————————————————————

State of ——————————— }
County of ——————————— } ss.

————————————————————————

(Name of registrant or of person authorized to sign for a juristic registrant) states that (1) ———————— (Name of registrant) owns the above identified registration issued ———————— (Date) (2), as shown by records in the Patent and Trademark Office; and that the mark shown therein is still in use (3) as evidenced by (4) ————.

(5)

————————————————————————

(Signature; if a corporation or other juristic organization, give the official title of the person who signs.)

(JURAT) (Use jurat from form 4.1.)

REPRESENTATION

(See form 4.2 and Note (6) below.)

NOTES

The affidavit of which this form is an illustration must be filed within the sixth year after the date of registration under the Act of 1946 or after the date of publication under section 12(c) of said Act.

(1) The present owner of the registration must file the affidavit as registrant.

(2) If the registration issued under a prior act and has been published under section 12(c), add: "and published under section 12(c) on ———————— (Date)".

(3) If the mark is not in use at the time of filing the affidavit, but there is no intention to abandon the mark, facts must be recited to show that the nonuse is due to special circumstances.

(4) Insert "the specimen included showing the mark as currently used," or recite facts as to sales or advertising which will show that the mark is in current use. Specimen illustrating use, or facts as to use or nonuse, are required for each class for which action is sought.

(5) The required fee of $10.00 must be submitted for each class for which action is sought, and if action is sought for less than the total number of classes in the registration, the classes for which action is sought should be specified.

(6) If registrant is not domiciled in the United States, a domestic representative must be designated. See form 4.4. If a designation in not submitted with this form, a prior unrevoked designation will meet the requirement if such is already in the registration file.

[43 FR 55399, Nov. 28, 1978]

§ 4.16 Affidavit under section 15.

Mark ————————————————————

(Identify the mark)

Reg. No. ————————————————————

Class No. ————————————————————

State of ——————————— }
County of ——————————— } ss.

————————————————————————

(Name of registrant or of person authorized to sign for a juristic registrant) states that (1) ———————— (Name of registrant) owns the above identified registration issued ———————— (Date) (2), as shown by records in the Patent and Trademark Office; that the mark shown therein has been in continuous use in (3) ———— (Type of commerce) commerce for five consecutive years from (4) ————————

(Date) to the present, on each of the following goods (5) stated in the registration:

————————————————————

(List the goods or services or insert the words "all the goods" or "all the services"); that such mark is still in use in (3) ———— (Type of commerce) commerce; that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register, and that there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

————————————————————

(Signature; if a corporation or other juristic organization, give the official title of the person who signs.)

(JURAT) (Use jurat from form 4.1.)

REPRESENTATION

(See form 4.2.)

NOTES

(1) The present owner of the registration must file the affidavit as registrant.

(2) If the registration issued under a prior act and has been published under section 12(c), add: "and published under section 12(c) on ————————(Date)."

(3) Type of commerce must be specified as "interstate," "territorial," "foreign," or such other commerce as may lawfully be regulated by Congress. Foreign registrants must specify commerce which Congress may regulate, using wording such as commerce with the United States or commerce between the United States and a foreign country.

(4) The date should be the beginning of a five year period of continuous use, all of which five year period falls after the date of registration under the Act of 1946 or after the date of publication under section 12(c). A date which would produce a period of continuous use which is longer than five years may be stated provided the period indicated includes five years of continuous use after registration under the Act of 1946 or publication under section 12(c)

(5) If a service mark registration, state: "in connection with each of the following services."

[43 FR 55400, Nov. 28, 1978]

§ 4.16a (Combined 8 & 15) Combined affidavit under Sections 8 and 15.

Mark ————————————————
(Identify the mark)
Reg. No. ————————————————
Class No. ————————————————

State of ———————— }
County of ———————— } ss.

————————————————————

(Name of registrant or of person authorized to sign for a juristic registrant) states that (1) ———————— (Name of registrant) owns the above identified registration issued ———————— (Date) (2), as shown by records in the Patent and Trademark Office; that the mark shown therein has been in continuous use in (3) ———— (Type of commerce) commerce for five consecutive years from the date of the registration or the date of publication under section 12(c) (4) to the present, on each of the following goods (5) stated in the registration:

————————————————————

(List the goods or services or insert the words "all the goods" or "all the services"); that such mark is still in use in (3) ———— (Type of commerce) commerce; that such mark is still in use as evidenced by (6) ———— ; that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register, and that there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

(7)

————————————————————

(Signature; if a corporation or other juristic organization, give the official title of the person who signs.)

(JURAT) (Use jurat from form 4.1.)

REPRESENTATION

(See form 4.2 and note (8) below.)

NOTES

This combined form should not be used with the section 8 portion of the affidavit is based on nonuse.

(1) The present owner of the registration must file the affidavit as registrant.

(2) If the registration issued under a prior act and has been published under section 12(c), add: "and published under section 12(c) on ———————— (Date)."

(3) Type of commerce must be specified as "interstate," "territorial," "foreign," or such other commerce as may lawfully be regulated by Congress. Foreign registrants must specify commerce which Congress may regulate, using wording such as commerce with the United States or commerce between the United States and a foreign country.

(4) This form is only appropriate when the five year period of continuous use which

is required for section 15 is also the first five years after registration or after publication under section 12(c) which is required for section 8.

(5) If a service mark registration, state: "in connection with each of the following services."

(6) Insert "the specimen included showing the mark as currently used," or recite facts as to sales or advertising which will show that the mark is in current use.

(7) The required fee of $10.00 for section 8 must be submitted for each class for which action is sought, and if action is sought for less than the total number of classes in the registration, the classes for which action is sought should be specified.

(8) If registrant is not domiciled in the United States, a domestic representative must be designated for section 8. See form 4.4. If a designation is not submitted with this form, a prior unrevoked designation will meet the requirement if such is already in the registration file.

[43 FR 55400, Nov. 28, 1978; 45 FR 56343, Aug. 25, 1980]

§ 4.17 Opposition in the United States Patent and Trademark Office.

In the matter of application Serial No. ————. Published in the *Official Gazette* on ———— (Date)

————————————

(Name of opposer)

v.

————————————

(Name of applicant)

Opposition No. ———— (To be inserted by Patent and Trademark Office) ———— (Name of opposer), a(n)(1) ———— (Legal entity of opposer), located and doing business at ———— (Address), believes that it/he/she will be damaged by registration of the mark shown in the above identified application, and hereby opposes the same.

As grounds of opposition, it is alleged that:

(Numbered paragraphs should state the grounds and recite facts tending to show why opposer believes opposer will be damaged.)

(2)

State of ————} ss.
County of ————}

————————————

(Name of opposer or of person authorized to sign for a juristic opposer) states that he/she is the opposer named in this opposition, or is the person authorized to sign for the juristic opposer named in this opposition; that he/she has read the opposition and knows the contents thereof; and that the allegations are true, except as to the matters stated therein to be upon information and belief, and as to those matters he/she believes them to be true.

————————————

(Signature of opposer; if opposer is a corporation or other juristic organization, give the official title of the person who signs for opposer.)

(JURAT) (Use Jurat from form 4.1)

REPRESENTATION

(See form 4.2 and Note (7) under from 4.1 For opposers who are foreigners, it is customary to regard a power of attorney as the equivalent of a domestic representative.)

NOTES

(1) If an individual, state: "an individual," or "an individual trading as ————," if there is a business trade name. If a partnership, state: "a partnership composed of ———— (Names of partners)." If a corporation, association, or other organization, state "a corporation (or specify other type of organization) organized and existing under the laws of ———— (State or country)."

(2) The required fee of $25.00 must be submitted for each class to be opposed, and if opposition is sought for less than the total number of classes, the classes to be opposed should be specified.

[43 FR 55400, Nov. 28, 1978]

§ 4.18 Petition to cancel a registration in the United States Patent and Trademark Office.

In the matter of Registration No. ————. Date of Issue ————.

————————————

(Name of petitioner)

v.

————————————

(Name of registrant)

Cancellation No. ———— (To be inserted by Patent and Trademark Office) ———— (Name of petitioner), a(n)(1) ———— (Legal entity of petitioner), located and doing business at ———— (Address), believes that it/he/she is or will be damaged by the above identified registration, and hereby petitions to cancel the same.

As grounds therefor, it is alleged that:

(Numbered paragraphs should state the grounds and recite facts tending to show why petitioner believes that petitioner is or will be damaged.)

(2)

State of ————————
County of ———————— } ss.

————————————————————

(Name of petitioner or of person authorized to sign for a juristic petitioner) states that he/she is the petitioner named in this petition to cancel, or is the person authorized to sign for the juristic petitioner named in this petition to cancel; that he/she has read the petition to cancel and knows the contents thereof; and that the allegations are true, except as to the matters stated therein to be upon information and belief, and as to those matters he/she believes them to be true.

————————————————————

(Signature of petitioner to cancel; if petitioner is a corporation or other juristic organization, give the official title of the person who signs for petitioner.)

(JURAT) (Use jurat from form 4.1.)

REPRESENTATION

(See form 4.2 and Note (7) under form 4.1. For petitioners who are foreigners, it is customary to regard a power of attorney as the equivalent of a domestic representative.)

NOTES

(1) If an individual, states: "an individual," or "an individual trading as ————," if there is a business trade name. If a partnership, state: "a partnership composed of ———————— (Names of partners)." If a corporation, association, or other organization, state "a corporation (or specify other type of organization) organized and existing under the laws of ———————— (State or country)."

(2) The required fee of $25.00 must be submitted for each class sought to be cancelled, and if cancellation is sought for less than the total number of classes, the classes sought to be cancelled should be specified.

[43 FR 55401, Nov. 28, 1978]

§ 4.19 Ex parte appeal from Examiner of Trademarks in the United States Patent and Trademark Office.

————————————————————

(Name of applicant)

————————————————————

(Serial number of application)

To the Trademark Trial and Appeal Board:

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Examiner of Trademarks refusing registration.

————————————————————

(Signature of applicant; if applicant is a corporation or other juristic organization, give the official title of the person who signs for applicant.)

§ 4.21 Assignment of application.

Whereas ———————— (Name of assignor), of ———————— (Address), has adopted and is using a mark for which said assignor has filed application in the United States Patent and Trademark Office for registration, Serial No. ————; and

Whereas ———————— (Name of assignee), of (1) ———————— (Address), is desirous of acquiring said mark;

Now, therefore, for good and valuable consideration, receipt of which is hereby acknowledged, said ———————— (Name of Assignor) does hereby assign unto the said ———————— (Name of assignee) all right, title and interest in and to the said mark, together with the good will of the business symbolized by the mark, and the above identified application for registration of said mark.

(2)

The Commissioner of Patents and Trademarks is requested to issue the certificate of registration to said assignee.

————————————————————

(Signature of assignor; if assignor is a corporation or other juristic organization, give the official title of the person who signs for assignor.)

State of ————————
County of ———————— } ss.

On this ——— day of ————, ——, before me appeared ————————, the person who signed this instrument, who acknowledged that he/she signed it as a free act on his/her own behalf (or on behalf of the identified corporation or other juristic entity with authority to do so).

————————————————————*

Notary Public

---

*(The wording of the acknowledgement may vary from this illustration but should be wording acceptable under the law of the jurisdiction where executed; the person who signs the acknowledgement must be authorized to do so by the law of the jurisdiction where executed, and the seal or stamp of the notary, or other evidence of authority in the jurisdiction of execution, must be affixed.)

NOTES

(1) If the postal address of the assignee is not given either in the instrument or in an accompanying paper, registration to the assignee may be delayed.

(2) If assignee is not domiciled in the United States, a domestic representative must be designated. See form 4.4, changing the word "applicant" to "assignee."

[43 FR 55401, Nov. 28, 1978]

§ 4.22 Assignment of registration.

Whereas ———————— (Name of assignor), of ———————— (Address), has adopted, used and is using a mark which is registered in the United States Patent and Trademark Office, Registration No. ————, dated ————————; and

Whereas ———————— (Name of assignor), of ———————— (Address), is desirous of acquiring said mark and the registration thereof;

Now, therefore, for good and valuable consideration, receipt of which is hereby acknowledged, said ———————— (Name of assignor) does hereby assign unto the said ———————— (Name of assignee) all right, title and interest in and to the said mark, together with the good will of the business symbolized by the mark, and the above identified registration thereof.

(2)

————————————————

(Signature of assignor; if assignor is a corporation or other juristic organization, give the official title of the person who signs for assignor.)

State of ————————

ss.

County of ————————

On this ——— day of ————, ——, before me appeared ————————, the person who signed this instrument, who acknowledged that he/she signed it as a free act on his/her own behalf (or on behalf of the identified corporation or other juristic entity with authority to do so).

————————————————*

Notary Public

NOTES

(1) If the postal address of the assignee is not given either in the instrument of in an accompanying paper, recording may be delayed pending receipt of such address.

(2) If assignee is not domiciled in the United States, a domestic representative must be designated. See form 4.4, changing the word "applicant" to "assignee."

[43 FR 55402, Nov. 28, 1978]

§ 4.23 A suggested format for the certificate of mailing under 37 CFR 1.8(a) to be included with the correspondence.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on ———————— (Date of Deposit).

————————————————

Print or Type Name of Person Signing Certificate

————————————————

Signature of Person Signing Certificate

————————————————

Date of Signature

The Patent and Trademark Office has determined that these rule changes have no potential major economic consequences requiring the preparation of a regulatory analysis under Executive Order 12044.

[43 FR 55402, Nov. 28, 1978]

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO FILE APPLICATIONS IN FOREIGN COUNTRIES

Codification Note: Part 5 is placed in a separate grouping of parts pertaining to patents. It appears on page 116 of this volume.

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

Sec.

6.1 International schedule of classes of goods and services.
6.2 Prior U.S. schedule of classes of goods and services.
6.3 Schedule for certification marks.
6.4 Schedule for collective membership marks.

Authority: Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123.

Source: 24 FR 10383, Dec. 22, 1959, unless otherwise noted.

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemical products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or

pastes, for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.

5. Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax, disinfectants; preparations for killing weeds and destroying vermin.

6. Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (nonelectric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; ores.

7. Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators.

8. Hand tools and instruments; cutlery, forks, and spoons; side arms.

9. Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counterfreed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes, and teeth).

11. Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosive substances; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.

15. Musical instruments (other than talking machines and wireless apparatus).

16. Paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and cliches (stereotype).

17. Gutta percha, india rubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (nonmetallic).

18. Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; roadmaking materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.

20. Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics.

21. Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes, steel wool; unworked or semiworked glass (excluding glass used in building); glassware, procelain and earthenware, not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials.

23. Yarns, threads.

24. Tissues (piece goods); bed and table covers; textile articles not included in other classes.

25. Clothing, including boots, shoes and slippers.

26. Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (nontextile).

28. Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.

29. Meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionary, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.

32. Beer, ale and porter; mineral and aerated waters and other nonalcoholic drinks; syrups and other preparations for making beverages.

33. Wines, spirits and liqueurs.

34. Tobacco, raw or manufactured; smokers' articles; matches.

SERVICES

35. Advertising and business.
36. Insurance and financial.
37. Construction and repair.
38. Communication.
39. Transportation and storage.
40. Material treatment.
41. Education and entertainment.
42. Miscellaneous.

[38 FR 14681, June 4, 1973]

§ 6.2 Prior U.S. schedule of classes of goods and services.

Class	Title
	GOODS
1	Raw or partly prepared materials.
2	Receptacles.
3	Baggage, animal equipments, portfolios, and pocket books.
4	Abrasives and polishing materials.
5	Adhesives.
6	Chemicals and chemical compositions.
7	Cordage.
8	Smokers' articles, not including tobacco products.
9	Explosives, firearms, equipments, and projectiles.
10	Fertilizers.
11	Inks and inking materials.
12	Construction materials.
13	Hardware and plumbing and steamfitting supplies.
14	Metals and metal castings and forgings.
15	Oils and greases.
16	Protective and decorative coatings.
17	Tobacco products.
18	Medicines and pharmaceutical preparations.
19	Vehicles.
20	Linoleum and oiled cloth.
21	Electrical apparatus, machines, and supplies.
22	Games, toys, and sporting goods.
23	Cutlery, machinery, and tools, and parts thereof.
24	Laundry appliances and machines.
25	Locks and safes.
26	Measuring and scientific appliances.
27	Horological instruments.
28	Jewelry and precious-metal ware.
29	Brooms, brushes, and dusters.
30	Crockery, earthenware, and porcelain.
31	Filters and refrigerators.
32	Furniture and upholstery.
33	Glassware.
34	Heating, lighting, and ventilating apparatus.
35	Belting, hose, machinery packing, and nonmetallic tires.
36	Musical instruments and supplies.
37	Paper and stationery.
38	Prints and publications.
39	Clothing.
40	Fancy goods, furnishings, and notions.
41	Canes, parasols, and umbrellas.
42	Knitted, netted, and textile fabrics, and substitutes therefor.
43	Thread and yarn.
44	Dental, medical, and surgical appliances.
45	Soft drinks and carbonated waters.
46	Foods and ingredients of foods.
47	Wines.
48	Malt beverages and liquors.
49	Distilled alcoholic liquors.
50	Merchandise not otherwise classified.
51	Cosmetics and toilet preparations.
52	Detergents and soaps.
	SERVICES
100	Miscellaneous.
101	Advertising and business.
102	Insurance and financial.
103	Construction and repair.
104	Communication.
105	Transportation and storage.
106	Material treatment.
107	Education and entertainment.

[24 FR 10383, Dec. 22, 1959. Redesignated at 38 FR 14681, June 4, 1973]

§ 6.3 Schedule for certification marks.

In the case of certification marks, all goods and services are classified in two classes as follows:

A. Goods.
B. Services.

[24 FR 10383, Dec. 22, 1959. Redesignated at 38 FR 14681, June 4, 1973]

§ 6.4 Schedule for collective membership marks.

All collective membership marks are classified as follows:

Class	Title
200	Collective Membership.

[24 FR 10383, Dec. 22, 1959. Redesignated at 38 FR 14681, June 4, 1973]

PART 7—REGISTER OF GOVERNMENT INTERESTS IN PATENTS

Codification Note: Part 7 is placed in a separate grouping of parts pertaining to patents. It appears on page 121 of this volume.

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SUBCHAPTER B—GOVERNMENT INVENTIONS JURISDICTION

PART 100—ADMINISTRATION OF A UNIFORM PATENT POLICY WITH RESPECT TO THE DOMESTIC RIGHTS IN INVENTIONS MADE BY GOVERNMENT EMPLOYEES

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100.2 Authority.
100.3 Scope.
100.4 Definitions.
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100.7 Appeals by employees.
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100.10 Liaison.
100.11 Dissemination of this part.

AUTHORITY: Sec. 4, E.O. 10096, 3 CFR 1949-1953 Comp., p. 292, as amended by E.O. 10930, 3 CFR 1959-1963 Comp., p. 456; and Delegation of Authority by the Acting Secretary of Commerce, Mar. 24, 1961, 26 FR 3118.

SOURCE: 27 FR 3289, Apr. 6, 1962, unless otherwise noted. Redesignated at 34 FR 20383, Dec. 31, 1969.

§ 100.1 Purpose.

The purpose of this part is to provide for the administration of a uniform patent policy for the Government with respect to the domestic rights in inventions made by Government employees and to prescribe rules and regulations for implementing and effectuating such policy.

§ 100.2 Authority.

Authority for the administration of a uniform patent policy is provided in Executive Order 10096, dated January 23, 1950, 15 FR 389, as amended by E.O. 10930, Mar. 24, 1961, 26 FR 2583, and Delegation of Authority by Acting Secretary of Commerce, Mar. 24, 1961, 26 FR 3118.

§ 100.3 Scope.

This part applies to any invention made by a Government employee on or after January 23, 1950, and to any action taken with respect thereto.

§ 100.4 Definitions.

(a) The term "Government agency," as used in this part, means any Executive department or independent establishment of the Executive branch of the Government (including any independent regulatory commission or board, any corporation wholly owned by the United States, and the Smithsonian Institution), but does not include the Atomic Energy Commission.

(b) The term "Government employee," as used in this part, means any officer or employee, civilian or military, of any Government agency, including any part-time consultant or part-time employee except as may otherwise be provided for by agency regulation approved by the Commissioner.

(c) The term "invention," as used in this part, means any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

(d) The term "Commissioner," as used in this part, means the Commissioner of Patents and Trademarks or any Assistant Commissioner who may act for the Commissioner of Patents and Trademarks.

§ 100.5 Determination of invention.

Each Government agency will determine whether the results of research, development, or other activity within the agency constitute invention within the purview of Executive Order 10096, as amended by Executive Order 10930.

§ 100.6 Determination of rights in and to inventions.

(a) Subject to review by the Commissioner as provided for in this part, each Government agency will determine the respective rights of the Government and of the inventor in and to any invention made by a Government employee while under the administrative jurisdiction of such agency.

(b) The following rules shall be applied in determining the respective rights of the Government and of the inventor in and to any invention that is subject to the provisions of this part:

(1) The Government shall obtain, except as herein otherwise provided, the entire domestic right, title and interest in and to any invention made by any Government employee: (i) During working hours, or (ii) with a contribution by the Government of facilities, equipment, materials, funds or information, or of time or services of other Government employees on official duty, or (iii) which bears a direct relation to or is made in consequence of the official duties of the inventor.

(2) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (b)(1) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title, and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (b)(1) of this section), the Government agency concerned shall leave title to such invention in the employee, subject however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation, in the terms thereof or where applicable in the terms required by 35 U.S.C. 266, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(3) In applying the provisions of paragraphs (b) (1) and (2) of this section to the facts and circumstances relating to the making of a particular invention, it shall be presumed that an invention made by an employee who is employed or assigned: (i) To invent or improve or perfect any art, machine, design, manufacture, or composition of matter, (ii) to conduct or perform research, development work, or both, (iii) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (iv) to act in a liaison capacity among governmental or non-governmental agencies or individuals engaged in such research or development work, falls within the provisions of paragraph (b)(1) of this section, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b)(2) of this section. Either presumption may be rebutted by a showing of the facts and circumstances and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the Government employee, subject to law.

(4) In any case wherein the Government neither: (i) Obtains the entire domestic right, title and interest in and to an invention pursuant to the provisions of paragraph (b)(1) of this section nor (ii) reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions of paragraph (b)(2) of this section, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

(c) In the event that a Government agency determines, pursuant to paragraph (b) (2) or (4) of this section, that title to an invention will be left with an employee, the agency shall notify the employee of this determination and promptly prepare, and preserve in appropriate files, accessible to the Commissioner, a written, signed, and dated statement concerning the invention including the following:

(1) A description of the invention in sufficient detail to identify the invention and show its relationship to the employee's duties and work assignments;

(2) The name of the employee and his employment status, including a detailed statement of his official duties and responsibilities at the time the invention was made; and

(3) A statement of agency determination and reasons therefor. The agency shall, subject to considerations of national security, or public health, safety, or welfare, submit to the Commissioner a copy of this written statement. This submittal in a case falling

within the provisions of paragraph (b)(2) of this section shall be made after the expiration of the period prescribed in § 100.7 for the taking of an appeal, or it may be made prior to the expiration of such period if the employee acquiesces in the agency determination. The Commissioner thereupon shall review the determination of the Government agency, and his decision respecting the matter shall be final, subject to the right of the employee or the agency to submit to the Commissioner within 30 days (or such longer period as the Commissioner may, for good cause, shown in writing, fix in any case) after receiving notice of such decision, a petition for the reconsideration of the decision. A copy of any such petition must also be filed by the inventor with the employing agency within the prescribed period.

§ 100.7 Appeals by employees.

(a) Any Government employee who is aggrieved by any agency determination pursuant to § 100.6(b) (1) or (2) may obtain a review of the agency determination by filing, within 30 days (or such longer period as the Commissioner may for good cause shown in writing, fix in any case) after receiving notice of such determination, two copies of an appeal with the Commissioner. The Commissioner then shall forward one copy of the appeal to the agency.

(b) On receipt of a copy of an appeal filed pursuant to paragraph (a) of this section, the Government agency which made the determination shall, subject to considerations of national security, or public health, safety, or welfare, promptly furnish both the Commissioner and the inventor with a copy of a report containing the following information about the invention involved in the appeal:

(1) A copy of a statement by the agency containing the information specified in § 100.6(c), and

(2) A detailed statement of the points of dispute or controversy, together with copies of any statements or written arguments filed with the agency, and of any other relevant evidence that the agency considered in making its determination of Government interest. Within 25 days (or such longer period as the Commissioner may, for good cause shown, fix in any case) after the transmission of a copy of the agency report to the employee, the employee may file a reply thereto with the Commissioner and file one copy thereof with the agency.

(c) After the time for the inventor's reply to the Government agency's report has expired and if the inventor has so requested in his appeal, a date will be set for the hearing of oral arguments by the employee (or by an attorney whom he designates by written power of attorney filed before, or at the hearing) and a representative of the Government agency involved. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to thirty minutes for each side. The employee need not retain an attorney or request an oral hearing to secure full consideration of the facts and his arguments. He may expedite such consideration by notifying the Commissioner when he does not intend to file a reply to the agency report.

(d) After a hearing on the appeal, if a hearing was requested, or after expiration of the period for the inventor's reply to the agency report if no hearing is set, the Commissioner shall issue a decision on the matter, which decision shall be final after the period for asking reconsideration expires or on the date that a decision on a petition for reconsideration is finally disposed of. Any request for reconsideration or modification of the decision must be filed within 30 days from the date of the original decision (or within such an extension thereof as may be set by the Commissioner before the original period expires). The Commissioner's decision shall be made after consideration of the statements of fact in the employee's appeal, the agency's report, and the employee's reply, but the Commissioner, at his discretion and with due respect to the rights and convenience of the inventor and the Government agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits or dispositions on specific facts in dispute.

§ 100.8 Patent protection.

(a) A Government agency, upon determining that an invention coming within the scope of § 100.6(b) (1) or (2) has been made, shall thereupon determine whether patent protection will be sought in the United States by the agency for such invention. A controversy over the respective rights of the Government and of the employee in any case shall not delay the taking of the actions provided for in this section. In cases coming within the scope of § 100.6(b)(2), agency action looking toward such patent protection shall be contingent upon the consent of the employee.

(b) Where there is a dispute as to whether § 100.6(b) (1) or (2) applies in determining the respective rights of the Government and of an employee in and to any invention, the agency will determine whether patent protection will be sought in the United States pending the Commission's decision on the dispute and, if it decides that an application for patent should be filed, will take such rights as are specified in § 100.6(b)(2), but this shall be without prejudice to acquiring the rights specified in paragraph (b)(1) of that section should the Commissioner so decide.

(c) Where an agency has determined to leave title to an invention with an employee under § 100.6(b)(2), the agency will, upon the filing of an application for patent and pending review of the determination by the Commissioner, take the rights specified in that paragraph without prejudice to the subsequent acquisition by the Government of the rights specified in paragraph (b)(1) of that section should the Commissioner so decide.

(d) In the event that a Government agency determines that an application for patent will not be filed on an invention made under the circumstances specified in § 100.6(b)(1), giving the United States the right to title thereto, the agency shall, subject to considerations of national security, or public health, safety, or welfare, report to the Commissioner, promptly upon making such determination, the following information concerning the invention:

(1) Description of the invention in sufficient detail to permit a satisfactory review;

(2) Name of the inventor and his employment status; and

(3) Statement of agency determination and reasons therefor. The Commissioner may, if he determines that the interest of the Government so requires and subject to considerations of national security, or public health, safety, or welfare, bring the invention to the attention of any Government agency to whose activities the invention may be pertinent, or cause the invention to be fully disclosed by publication thereof; *Provided, however,* That no application for patent respecting any variety of plant invented by an employee of the Department of Agriculture shall be filed without the approval of the Secretary of Agriculture.

§ 100.9 Report forms.

The Commissioner will prescribe the forms to be used by Government agencies in submitting the reports specified in this part.

§ 100.10 Liaison.

Each Government agency shall designate a liaison officer at the agency level to deal with the Commissioner: *Provided, however,* That the Departments of the Army, the Navy, and the Air Force may each designate a liaison officer.

§ 100.11 Dissemination of this part.

Each Government agency shall make appropriate arrangements for the dissemination to its employees of the provisions of this part.

PART 101—ACQUISITION AND PROTECTION OF FOREIGN RIGHTS IN INVENTIONS

Sec.
101.1 Purpose.
101.2 Authority.
101.3 Scope.
101.4 Option to be obtained.
101.5 Action by agency concerned.
101.6 Action by the Department of Commerce.
101.7 Publication in lieu of patenting.
101.8 Foreign filing by inventor.

Sec.
101.9 Administration of foreign patents.
101.10 Reports and records.
101.11 Dissemination of this part.

AUTHORITY: E.O. 9865, 3 CFR 1943-1948 Comp., p. 651, E.O. 10096, 3 CFR 1948-1953 Comp., p. 292.

SOURCE: Administrative Order 6, 19 FR 3937, June 29, 1954, unless otherwise noted. Redesignated at 34 FR 20383, Dec. 31, 1969.

§ 101.1 Purpose.

The purpose of this part is to provide for the administration of a uniform policy for the Government with respect to the acquisition and protection of foreign rights in and to certain inventions.

§ 101.2 Authority.

Authority for the issuance of this part is provided in Executive Order 9865, dated June 14, 1947 (12 FR 3907), as amended by paragraph 5 of Executive Order 10096, dated January 23, 1950 (15 FR 389).

§ 101.3 Scope.

This part is restricted to inventions to which the Government is entitled to acquire, or may acquire, title or the right to file foreign patent applications or otherwise to seek protection abroad thereon. Exempted from the provisions of this part are (a) inventions within the jurisdiction of the Atomic Energy Commission, except in such cases as the said Commission specifically authorizes the inclusion of an invention, and (b) inventions officially classified for reasons of the national security, until such inventions become declassified.

§ 101.4 Option to be obtained.

(a) When the Government is entitled to acquire foreign rights in and to an invention made by a Government employee, including the right to file foreign patent applications or otherwise to seek protection abroad on the invention, the Government agency concerned shall obtain an option to acquire such rights.

(b) When the Government is entitled to acquire foreign rights in and to an invention made pursuant to contract, including the right to file foreign patent applications or otherwise to seek protection abroad on the invention, the Government agency concerned shall, when the agency deems it desirable, obtain an option to acquire such rights.

§ 101.5 Action by agency concerned.

Subject to the approval of the Chairman of the Government Patents Board on all matters of policy, the Government agency concerned shall, with respect to each invention on which the option specified in § 101.4 is obtained or on which the foreign rights have been acquired, determine whether or not and in what foreign jurisdictions patent protection should be sought in the public interest. Upon determining that foreign patent protection is desirable, the agency shall:

(a) To the extent of available funds within its own appropriation, take or cause to be taken all action necessary to secure such foreign patent protection of the invention, consistent with existing law and the requirements of the Government; and

(b) If sufficient funds are not available within its own appropriation or the agency does not see fit to use funds when available, furnish the Secretary of Commerce as soon as practicable, preferably not later than two months after the filing of the application for United States patent on the invention, through the use of Foreign Patent Protection Reporting Form TS-12, sufficient information concerning the invention and the reasons for its determination with respect to the desirability of foreign patent protection, to enable the Secretary of Commerce to seek the financial support of other interested Government agencies and/or of industry in securing foreign patent protection of the invention.

§ 101.6 Action by the Department of Commerce.

Subject to the approval of the Chairman of the Government Patents Board on all matters of policy, the Secretary of Commerce shall, immediately upon receipt of a Foreign Patent Protection Reporting Form TS-12 on an invention, pursuant to § 101.5(b):

(a) Consult with Government agencies and with United States industry and commerce, familiar with the technical, scientific, industrial, commercial or other economic or social factors affecting the invention involved, to ascertain possible interest in foreign patent protection of the invention and willingness to finance such protection; and

(b) After such consultation and consideration of such factors as the availability of valid patent protection in the countries selected and to the extent of funds made available by Government agencies and/or industry, take or cause to be taken all action necessary to secure such protection of the invention, consistent with existing law and the requirements of the Government.

§ 101.7 Publication in lieu of patenting.

When the foreign rights of the Government with respect to an invention may be adequately protected through prompt disclosure of the invention in lieu of patenting, the Government agency concerned, or the Secretary of Commerce in cooperation with the Government agency concerned, may, with the approval of the Chairman of the Government Patents Board, cause the invention to be disclosed by publication thereof.

§ 101.8 Foreign filing by inventor.

When the foreign rights in and to an invention are not assigned to the Government but the Government may, at its option or on request, acquire such rights and determines not to cause an application to be filed in any particular foreign country or otherwise to seek protection of the invention, or fails to take such action: (a) Within six months of the filing of an application for United States patent on the invention, or (b) within six months of declassification of an invention previously under a security classification, or (c) within six months after disclosure of an invention to the Government pursuant to contract, whichever is later, such determination or such failure to act shall constitute a decision by the Government to leave such rights to the inventor subject, to the extent practicable, to a nonexclusive, irrevocable, royalty-free license to the Government in any patent which may issue thereon in any foreign country, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government.

§ 101.9 Administration of foreign patents.

The functions and duties of the Chairman of the Government Patents Board under paragraphs 4 and 5 of Executive Order 9865, as amended by paragraph 5 of Executive Order 10096, are, until further notice, hereby delegated to the Secretary of Commerce: *Provided, however,* That all matters of policy arising under this delegation shall be subject to the approval of the Chairman of the Government Patents Board.

§ 101.10 Reports and records.

(a) Each Government agency shall report promptly to the Secretary of Commerce, with a copy to the Chairman of the Government Patents Board, all actions by the agency taken pursuant to §§ 101.5 and 101.7, as well as disclosures by publication by the agency made pursuant to paragraph 2(a) of Executive Order 10096.

(b) The Secretary of Commerce shall maintain adequate records and other necessary files, to provide readily available information on all inventions included under the provisions of §§ 101.5, 101.6, 101.7, and paragraph (a) of this section, and shall submit to the Chairman of the Government Patents Board a written report quarterly, or otherwise as the Chairman may request, on all operations of this program during the preceding calendar quarter or other period designated.

§ 101.11 Dissemination of this part.

Each Government agency shall make appropriate dissemination of the provisions of this part.

PART 102—LICENSING OF FOREIGN PATENTS ACQUIRED BY THE GOVERNMENT

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102.1 Purpose.
102.2 Authority.
102.3 Scope.
102.4 The Department of State.

Sec.
102.5 Licenses under foreign patents.
102.6 Reports and records.

AUTHORITY: E.O. 9865, 12 FR 3907, 3 CFR, 1947 Supp., E.O. 10096, 15 FR 389, 3 CFR, 1950 Supp.

SOURCE: Administrative Order 7, 19 FR 3938, June 29, 1954, unless otherwise noted. Redesignated at 34 FR 20383, Dec. 31, 1969.

§ 102.1 Purpose.

The purpose of this part is to provide for the administration of a uniform policy for the Government with respect to the licensing of foreign patents acquired by the Government.

§ 102.2 Authority.

Authority for the issuance of this part is provided in Executive Order 9865, dated June 14, 1947 (12 FR 3907), as amended by paragraph 5 of Executive Order 10096, dated January 23, 1950 (15 FR 389).

§ 102.3 Scope.

This part is to implement and supplement § 101.9 of this chapter,[1] with respect to inventions on which the Government has acquired foreign patents, except inventions within the jurisdiction of the Atomic Energy Commission which are not specifically authorized by said Commission for inclusion within the terms of this part.

§ 102.4 The Department of State.

Pursuant to Executive Orders 9865 and 10096, it is the responsibility of the Department of State, in consultation with the Chairman of the Government Patents Board and the Secretary of Commerce, to seek arrangements among governments under which each government and its nationals shall have access to the foreign patents of the other participating governments.

§ 102.5 Licenses under foreign patents.

(a) Licenses under foreign patents acquired by the United States Government shall be granted by the Secretary of Commerce to nationals of the United States on a nonexclusive, revocable, royalty-free basis, except in such cases as the Secretary of Commerce, with the approval of the Chairman of the Government Patents Board, shall determine it to be inconsistent with the public interest to issue such licenses on a nonexclusive, royalty-free basis.

(b) Licenses under foreign patents acquired by the United States Government may be granted by the Secretary of Commerce to a foreign government or its nationals pursuant to any arrangements which may come into force with such foreign government as provided in § 102.4, or, in the absence of such arrangements, on such terms as the Secretary of Commerce, with the approval of the Chairman of the Government Patents Board and of the Secretary of State, shall determine, in accordance with law, to be in the public interest, subject to outstanding licenses.

(c) With respect to foreign patents relating to matters of public health, licenses under such patents issued to the United States Government may be granted by the Secretary of Commerce to a foreign government or its nationals on a nonexclusive, revocable, royalty-free basis unless the Chairman of the Government Patents Board, on the recommendation of the Secretary of State, shall determine otherwise, regardless of whether such foreign government is a party to the arrangements specified in § 102.4.

§ 102.6 Reports and records.

The Secretary of Commerce shall maintain adequate records and other necessary files, to provide readily available information on all licenses granted under § 102.5, and shall submit to the Chairman of the Government Patents Board a written report, with a copy to the Secretary of State, quarterly or otherwise as the Chairman may request, on all operations of the licensing program during the preceding calendar quarter or other period designated.

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[1] See Part 101 of this chapter (A.O. 6).

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CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

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PART 201—GENERAL PROVISIONS

Sec.

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201.2 Information given by the Copyright Office.
201.3 [Reserved]
201.4 Recordation of transfers and certain other documents.
201.5 Corrections and amplifications of copyright registrations; applications for supplementary registration.
201.6 Payment and refund of Copyright Office fees.
201.7 [Reserved]
201.8 Import statements.
201.9 Recordation of agreements between copyright owners and public broadcasting entities.
201.10 Notices of termination of transfers and licenses covering extended renewal term.
201.11 Notices of identity and signal carriage complement of cable systems.
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201.13 Notices of objection to certain noncommercial performances of non-dramatic literary or musical works.
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201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of non-dramatic musical works.
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201.20 Methods of affixation and positions of the copyright notice on various types of works.
201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.
201.23 Transfer of unpublished copyright deposits to the Library of Congress.

AUTHORITY: Sec. 207, 61 Stat. 666; 17 U.S.C. 207.

SOURCE: 24 FR 4955, June 18, 1959, unless otherwise noted.

§ 201.1 Communications with the Copyright Office.

Mail and other communications shall be addressed to the Register of Copyrights, Library of Congress, Washington, D.C., 20559.

[24 FR 4955, June 18, 1959, as amended at 42 FR 2962, Jan. 14, 1977]

§ 201.2 Information given by the Copyright Office.

(a) *In general.* (1) Information relative to the operations of the Copyright Office is supplied without charge. A search of the records, indexes and deposits will be made for such information as they may contain relative to copyright claims upon application and payment of the statutory fee. The Copyright Office, however, does not undertake the making of comparisons of copyright deposits to determine similarity between works, nor does it give legal opinions or advice on such matters as:

(i) The validity or status of any copyright other than the facts shown in the records of the Office;

(ii) The rights of persons, whether in connection with cases of alleged copyright infringement, contracts between authors and publishers or other matters of a similar nature;

(iii) The scope and extent of protection of works in foreign countries or interpretation of foreign copyright laws or court opinions;

(iv) The sufficiency, extent or scope of compliance with the copyright law.

(2) In addition, the Office cannot undertake to furnish the names of copyright attorneys, publishers, agents, or other similar information.

(b) *Inspection and copying of records.* (1) Inspection and copying of completed records and indexes relating to a registration or a recorded document, and inspection of copies deposited in connection with a completed copyright registration, may be undertaken at such times as will not result in interference with or delay in the work of the Copyright Office.

(2) [Reserved]

(3) The Copyright Office maintains an administrative staff manual, referred to as its "Compendium of Office Practices," and an index to the

manual, for the general guidance of its staff in making registrations and recording documents. The manual and index, as amended and supplemented from time to time, are available in the Copyright Office for public inspection and copying.

(c) *Correspondence.* (1) Official correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office, and directly relating to a completed registration or to a recorded document, is made available for public inspection. Requests for photocopies of the correspondence shall be made pursuant to paragraph (d) of this section.

(2) (i) Correspondence, application forms and any accompanying material forming a part of a pending or rejected application are not records which are open to public inspection under paragraph (b) of this section.

(ii) Inspection of such files may be afforded upon presentation of written authorization of the claimant or his agent, or upon submission to the Register of Copyrights, Library of Congress, Washington, D.C., 20559, of a written request which is deemed by him to show good cause for such access and which establishes that the person making the request is one properly and directly concerned.

(iii) Where such access is authorized and photocopies of the official file are subsequently requested, the conditions and procedures of paragraph (d) of this section are controlling.

(3) Correspondence, memoranda, reports, opinions, and similar material relating to internal matters of personnel and procedures, office administration, security matters, and internal consideration of policy and decisional matters, including the work product of an attorney, are not open to public inspection.

(4) The Copyright Office will return unanswered any abusive or scurrilous correspondence.

(d) *Requests for copies.* (1) Requests for additional certificates of registration should be sent to the Copyright Office, and the accompanying fees should be made payable to the Register of Copyrights.

(2) Requests for photocopies of copyright deposits, official correspondence, and Copyright Office records (other than additional certificates of registration) should be sent to the Chief, Photoduplication Service, Library of Congress, Washington, D.C., 20540, the accompanying fees in payment of such services being made payable to that official. When the photocopy is to be certified by the Copyright Office, the additional certification fee should be made payable to the Register of Copyrights and both remittances together with the transmittal letter are to be sent to the Copyright Office.

(3) Requests for photocopies of official correspondence shall identify the specific material desired and shall contain a statement enabling the Copyright Office to determine if the writer is properly and directly concerned.

(4) Requests for photocopies of copyright deposits will be granted when one or more of the following conditions are fulfilled:

(i) *Authorization by owner.* When authorized in writing by the copyright owner or his designated agent.

(ii) *Request by attorney.* When required in connection with litigation, actual or prospective, in which the copyrighted work is involved; but in all such cases the attorney representing the actual or prospective plaintiff or defendant for whom the request is made shall give in writing: (*a*) The names of the parties and the nature of the controversy; (*b*) the name of the court where the action is pending, or, in the case of a prospective proceeding, a full statement of the facts of the controversy in which the copyrighted work is involved; and (*c*) satisfactory assurances that the requested copy will be used only in connection with the specified litigation.

(iii) *Court order.* When an order to have the copy made is issued by a court having jurisdiction of a case in which the copy is to be submitted as evidence.

[24 FR 4955, June 18, 1959, as amended at 32 FR 9315, June 30, 1967; 42 FR 2962, Jan. 14, 1977]

§ 201.3 [Reserved]

§ 201.4 Recordation of transfers and certain other documents.

(a) *General.* (1) This section prescribes conditions for the recordation of transfers of copyright ownership and other documents pertaining to a copyright under section 205 of Title 17 of the United States Code, as amended by Pub. L. 94-553. The filing or recordation of the following documents is not within the provisions of this section:

(i) Certain contracts entered into by cable systems located outside of the 48 contiguous States (17 U.S.C. 111(e); see 37 CFR 201.12);

(ii) Notices of identity and signal carriage complement, and statements of account, of cable systems (17 U.S.C. 111(d); see 37 CFR 201.11; 201.17);

(iii) Original, signed notices of intention to obtain compulsory license to make and distribute phonorecords of nondramatic musical works (17 U.S.C. 115(b); see 37 CFR 201.18);

(iv) License agreements, and terms and rates of royalty payments, voluntarily negotiated between one or more public broadcasting entities and certain owners of copyright (17 U.S.C 118; see 37 CFR 201.9);

(v) Notices of termination (17 U.S.C. 203, 304(c); see 37 CFR 201.10); and

(vi) Statements regarding the identity of authors of anonymous and pseudonymous works, and statements relating to the death of authors (17 U.S.C. 302).

(2) A "transfer of copyright ownership" has the meaning set forth in section 101 of Title 17 of the United States Code, as amended by Pub. L. 94-553. A document shall be considered to "pertain to a copyright" if it has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

(3) For purposes of this section:

(i) A "sworn certification" is an affidavit under the official seal of any officer authorized to administer oaths within the United States, or if the original is located outside of the United States, under the official seal of any diplomatic or consular officer of the United States or of a person authorized to administer oaths whose authority is proved by the certificate of such an officer, or a statement in accordance with section 1746 of Title 28 of the United States Code; and

(ii) An "official certification" is a certification, by the appropriate Government official, that the original of the document is on file in a public office and that the reproduction is a true copy or the original.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording documents.

(c) *Recordable documents.* Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(1) To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other full-size facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the persons who executed the document, or by an authorized representative of that person.

(2) To be recordable, the document must be complete by its own terms. (i) A document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached to the document or made a part of it shall be recordable only if the attachment is also submitted for recordation with the document or if the reference is deleted by the parties to the document. If a document has been submitted for recordation and has been returned by the Copyright

Office at the request of the sender for deletion of the reference to an attachment, the document will be recorded only if the deletion is signed or initialed by the persons who executed the document or by their authorized representatives. In exceptional cases a document containing a reference to an attachment will be recorded without the attached material and without deletion of the reference if the person seeking recordation submits a written request specifically asserting that: (A) The attachment is completely unavailable for recordation; and (B) the attachment is not essential to the identification of the subject matter of the document; and (C) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference. In such exceptional cases, the Copyright Office records of the document will be annotated to show that recordation was made in response to a specific request under this paragraph.

(ii) If a document otherwise recordable under this indicates on its face that it is a self-contained part of a larger instrument (for example: if it is designated "Attachment A" or "Exhibit B"), the Copyright Office will raise the question of completeness, but will record the document if the person requesting recordation asserts that the document is sufficiently complete as it stands.

(iii) When the document submitted for recordation merely identifies or incorporates by reference another document, or certain terms of another document, the Copyright Office will raise no question of completeness, and will not require recordation of the other document.

(3) To be recordable, the document must be legible and capable of being reproduced in legible microform copies.

(d) *Fee.* For a document consisting of six pages or less covering no more than one title, the basic recording fee is $10. An additional charge of 50 cents is made for each page over six and each title over one. For these purposes:

(1) A fee is required for each separate transfer or other document, even if two or more documents appear on the same page;

(2) The term "title" generally denotes "appellation" or "denomination" rather than "registration," "work," or "copyright"; and

(3) In determining the number of pages in a document, each side of a leaf bearing textual matter is regarded as a "page."

(e) *Recordation.* The date of recordation is the date when a proper document under paragraph (c) of this section and a proper fee under paragraph (d) of this section are all received in the Copyright Office. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 205, 702, 708)

[43 FR 35044, Aug. 8, 1978]

§ 201.5 Corrections and amplifications of copyright registrations; applications for supplementary registration.

(a) *General.* (1) This section prescribes conditions relating to the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration, under section 408(d) of Title 17 of the United States Code, as amended by Pub. L. 94-553. For the purposes of this section:

(i) A "basic registration" means any of the following: (A) A copyright registration made under sections 408, 409, and 410 of Title 17 of the United States Code, as amended by Pub. L. 94-553; (B) a renewal registration made under section 304 of Title 17 of the United States Code, as so amended; (C) a registration of claim to copyright made under Title 17 of the United States Code as it existed before January 1, 1978; or (D) a renewal registration made under Title 17 of the United States Code as it existed before January 1, 1978; and

(ii) A "supplementary registration" means a registration made upon application under section 408(d) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and the provisions of this section.

(2) No correction or amplification of the information in a basic registration will be made except pursuant to the

provisions of this § 201.5. As an exception, where it is discovered that the record of a basic registration contains an error that the Copyright Office itself should have recognized at the time registration was made, the Office will take appropriate measures to rectify its error.

(b) *Persons entitled to file an application for supplementary registration; grounds of application.* (1) Supplementary registration can be made only if a basic copyright registration for the same work has already been completed. After a basic registration has been completed, any author or other copyright claimant of the work, or the owner of any exclusive right in the work, or the duly authorized agent of any such author, other claimant, or owner, who wishes to correct or amplify the information given in the basic registration for the work may file an application for supplementary registration.[1]

(2) Supplementary registration may be made either to correct or to amplify the information in a basic registration. For the purposes of this section:

(i) A "correction" is appropriate if information in the basic registration was incorrect at the time that basic registration was made, and the error is not one that the Copyright Office itself should have recognized;

(ii) An "amplification" is appropriate: (A) To reflect additional information that could have been given, but was omitted, at the time basic registration was made; or (B) to reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that have occurred since the basic registration was made; or (C) to clarify information given in the basic registration;

(iii) Supplementary registration is not appropriate: (A) As an amplification, to reflect the ownership, division, allocation, licensing, or transfer of rights in a work, whether at the time basic registration was made or thereafter; or (B) to correct errors in statements or notices on the copies of phonorecords of a work, or to reflect changes in the content of a work; and

(iv) Supplementary registration to correct a renewal claimant or basis of claim in a basic renewal registration may be made only if the application for supplementary registration and fee are received in the Copyright Office within the statutory time limits for renewal. If the error or omission in a basic renewal registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim, supplementary registration may be made at any time. Supplementary registration is not appropriate to add a renewal claimant.

(c) *Form and content of application for supplementary registration.* (1) An application for supplementary registration shall be made on a form prescribed by the Copyright Office shall be accompanied by a fee of $10,[2] and shall contain the following information:

(i) The title of the work as it appears in the basic registration, including previous or alternative titles if they appear;

(ii) The registration number of the basic registration;

(iii) The year when the basic registration was completed.

(iv) The name or names of the author or authors of the work, and the copyright claimant or claimants in the work, as they appear in the basic registration;

(v) In the case of a correction: (A) The line number and heading or description of the part of the basic registration where the error occurred; (B) a transcription of the erroneous information as it appears in the basic registration; (C) a statement of the correct information as it should have appeared; and (D) if desired, an explanation of the error or its correction;

(vi) In the case of an amplification: (A) The line number and heading or description of the part of the basic registration where the information to be amplified appears; (B) a clear and succinct statement of the information to be added; and (C) if desired, an explanation of the amplification;

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[1] If the person who, or on whose behalf, an application for supplementary registration is submitted is the same as the person identified as the copyright claimant in the basic registration, the Copyright Office will place a note referring to the supplementary registration on its records of the basic registration.

[2] The $10 fee applies to all applications for supplementary registration, including those made to correct or amplify the information in a renewal registration.

(vii) The name and address: (A) To which correspondence concerning the application should be sent; and (B) to which the certificate of supplementary registration should be mailed; and

(viii) A certification. The certification shall consist of: (A) The handwritten signature of the author, other copyright claimant, or owner of exclusive right(s) in the work, or of the duly authorized agent of such author, other claimant or owner (who shall also be identified); (B) the typed or printed name of the person whose signature appears, and the date of signature; and (C) a statement that the person signing the application is the author, other copyright claimant or owner of exclusive right(s) in the work, or the authorized agent of such author, other claimant, or owner, and that the statements made in the application are correct to the best of that person's knowledge.

(2) The form prescribed by the Copyright Office for the foregoing purposes is designated "Application for Supplementary Copyright Registration (Form CA)". Copies of the form are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, D.C. 20559.

(3) Copies, phonorecords or supporting documents cannot be made part of the record of a supplementary registration and should not be submitted with the application.

(d) *Effect of supplementary registration.* (1) When a supplementary registration is completed, the Copyright Office will assign it a new registration number in the appropriate class, and issue a certificate of supplementary registration under that number.

(2) As provided in section 408(d) of Title 17, the information contained in a supplementary registration augments but does not supersede that contained in the basic registration. The basic registration will not be expunged or cancelled.

(Pub. L. 94-553; 17 U.S.C. 205, 408(d), 601(b), 702, 708)

[43 FR 773, Jan. 4, 1978]

§ 201.6 Payment and refund of Copyright Office fees.

(a) *In general.* All fees sent to the Copyright Office should be in the form of a money order, check or bank draft payable to the Register of Copyrights. Coin or currency sent to the Office in letters or packages will be at the remitter's risk. Remittances from foreign countries should be in the form of an International Money Order or Bank Draft payable and immediately negotiable in the United States for the full amount of the fee required. Uncertified checks are accepted subject to collection. Where the statutory fee is submitted in the form of a check, the registration of the copyright claim or other record made by the Office is provisional until payment in money is received. In the event the fee is not paid, the registration or other record shall be expunged.

(b) *Deposit accounts.* Persons or firms having a considerable amount of business with the Copyright Office may, for their own convenience, prepay copyright expenses by establishing a Deposit Account.

(c) *Refunds.* Money remitted to the Copyright Office for original, basic, supplementary or renewal registration will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the statutory fee will be refunded, but amounts of $5 or less will not be refunded unless specifically requested, and refunds of less than $1 may be made in postage stamps.

(d) *Return of deposit copies.* Copies of works deposited in the Copyright Office pursuant to law are either retained in the Copyright Office, transferred for the permanent collections or other uses of the Library of Congress, or disposed of according to law. When an application is rejected, the Copyright Office reserves the right to retain the deposited copies.

(17 U.S.C. 702, 708(c))

[24 FR 4955, June 18, 1959, as amended at 46 FR 25442, May 7, 1981]

§ 201.7 [Reserved]

§ 201.8 Import statements.

(a) *General.* (1) Upon receipt of a proper request under paragraph (b) of this section, and a fee of $3, the Copyright Office will issue an initial import statement for a work consisting preponderantly of nondramatic literary material that is in the English language, copies of which are to be imported into the United States under section 601(b)(2) of Title 17 of the United States Code, as amended by Pub. L. 94-553, whether registration has been made for the work before, on, or after January 1, 1978, provided no import statement has been issued previously for the same version of the work.

(2) After the issuance of an initial import statement for a work in accordance with a request made under paragraph (b) of this section, and upon receipt of a statement from an appropriate official of the United States Customs Service showing importation of less than two thousand copies of a work, the Copyright Office will issue an additional import statement permitting importation of the number of copies representing the difference between the number of copies already imported and two thousand copies. Additional import statements under paragraph (a)(2) will be issued without request and shall not require payment of a fee.

(3) Any import statement issued by the Copyright Office before January 1, 1978 shall remain valid to permit the importation of the number of copies stated therein. In the case of a work under copyright on December 31, 1977, an additional import statement permitting the importation of the number of copies representing the difference between the number of copies already imported under an import statement issued before January 1, 1978 and two thousand copies will be issued by the Copyright Office:

(i) Without request or payment of a fee, if a statement from an appropriate official of the United States Customs Service showing importation of fifteen-hundred or less copies is received after the effective date of this regulation; and

(ii) Upon the request of the copyright owner, as defined in paragraph (b)(2) of this section, and without payment of a fee, if a statement from an appropriate official of the United States Customs Service showing importation of fifteen-hundred or less copies is received before the effective date of this regulation.

(4) Except as provided by paragraph (a)(5) of this section, the Copyright Office will not issue an import statement where a work is eligible under section 601 of Title 17 of the United States Code, as amended by Pub. L. 94-553, for importation in an unlimited number of copies. A work may be eligible for such importation if it is either:

(i) Outside the scope of the manufacturing requirements of section 601 of Title 17 of the United States Code, as amended by Pub. L. 94-553; or

(ii) Exempted by section 601(b) of Title 17 of the United States Code, as amended by Pub. L. 94-553 from the importation prohibition of paragraph (a) of the same section 601; or

(iii) Unprotected by Title 17 of the United States Code, as amended by Pub. L. 94-553.

(5) In case of a dispute between the United States Customs Service and the copyright owner, as defined in paragraph (b)(2) of this section, regarding eligiblity of the work for unlimited importation of copies under section 601 of Title 17 of the United States Code, as amended by Pub. L. 94-553, the Copyright Office will issue an import statement, upon the request of the copyright owner, to permit the entry into the United States of no more than two thousand copies of any work identified in paragraph (a)(4) (i) and (ii) of this section.

(b) *Requests for Import Statement and Issuance.* (1) Import statements will not be issued until after the effective date of registration for the work. However, a request for an import statement may be submitted simultaneously with an application for registration.

(2) Requests for import statements shall be made by the copyright owner of the work as shown in the records of

the Copyright Office, or by the duly authorized agent of such owner. For the purpose of this section, the "copyright owner" is a person or organization that owns the exclusive right to import copies of the work into the United States at the time the request is made. The "copyright owner" may be either:

(i) The author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared); or

(ii) A claimant, other than the author, identified in the registration for the work; or

(iii) A person or organization that has obtained ownership of one or more exclusive rights, initially owned by the author, including the exclusive right to import copies into the United States.

(3) Requests for import statements shall be made on a form prescribed by the Copyright Office, and shall contain the following information:

(i) The title of the work;

(ii) The name or names of the author or authors of the work;

(iii) The name or names of the copyright claimants in the work;

(iv) The registration number, if registration has already been made for the work;

(v) The full name, mailing address, and telephone number of an individual person who may be contacted if further information is needed;

(vi) The full name and mailing address of the person or entity to whom or which the statement is to be issued; and

(vii) A certification of the request. The certification shall consist of: (A) The handwritten signature of the copyright owner of the work as shown in the records of the Copyright Office, or the duly authorized agent of such copyright owner (whose identity shall also be given); (B) the typewritten or printed name and address of such copyright owner or agent; (C) the date of signature; and (D) a statement that the person signing the request is the copyright owner or a duly authorized agent of the copyright owner, and that the Copyright Office is authorized to issue an import statement to the name and address given under paragraph (b)(3)(vi) of this section.

(4) The form prescribed by the Copyright Office for the foregoing purposes is designated "Request for Issuance of an Import Statement under sec. 601 of the U.S. Copyright Law (Form IS)". Copies of the form are available free upon request to the public Information Office, United States Copyright Office, Washington, D.C. 20559.

(5) After the effective date of registration for the work named in the request, the Copyright Office will issue an import statement permitting the importation of two thousand copies of the work to the name and address given under paragraph (b)(3)(vi) of this section.

(17 U.S.C. 601(b); 702)

[46 FR 12704, Feb. 18, 1981]

§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.

(a) License agreements voluntarily negotiated between one or more owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works, and one or more public broadcasting entities, and terms and rates of royalty payments agreed to among owners of copyright in nondramatic literary works and public broadcasting entities will be filed in the Copyright Office by recordation upon payment of the fee prescribed by this section. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of agreement; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the agreement, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the agreement, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments re-

ferred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 118.

(b) For a document consisting of six pages or less covering no more than one title, the basic recordation fee is $10; an additional charge of 50 cents is made for each page over six and each title over one.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office, and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 207 and 17 U.S.C. 118, 702, 708(11), as amended by Pub. L. 94-553)

[42 FR 16777, Mar. 30, 1977, as amended at 46 FR 33249, June 29, 1981]

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

(a) *Form.* The Copyright Office does not provide printed forms for the use of persons serving notices of termination.

(b) *Contents.* (1) A notice of termination must include a clear identification of each of the following:

(i) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(ii) The title and the name of at least one author of, and the date copyright was originally secured in, each work to which the notice of termination applies; and, if possible and practicable, the original copyright registration number;

(iii) A brief statement reasonably identifying the grant to which the notice of termination applies;

(iv) The effective date of termination; and

(v) In the case of a termination of a grant executed by a person or persons other than the author, a listing of the surviving person or persons who executed the grant. In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that aurhor's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (v), the notice may contain both of the following: (A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with (B) a statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304(c) of Title 17, U.S.C., or by their duly authorized agents.

(2) Clear identification of the information specified by paragraph (b) (1) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

(c) *Signature.* (1) In the case of a termination of a grant executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under clauses (1) and (2) of section 304 (c) of Title 17, U.S.C., or by their duly authorized agents, and shall

contain a brief statement of their relationship or relationships to that author.

(3) Where a signature is by a duly authorized agent, it shall clearly identify the person or persons on whose behalf the agent is acting.

(4) The handwritten signature of each person effecting the termination shall either be accompanied by a statement of the full name and address of that person, typewritten or printed legibly by hand, or shall clearly correspond to such a statement elswhere in the notice.

(d) *Service.* (1) The notice of notice of termination shall be served upon each grantee whose rights are being terminated, or the grantee's successor in title, by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.

(2) The service provision of section 304 (c) (4) of Title 17, U.S.C., will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation: (i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or (ii) if there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

(3) For purposes of paragraph (d)(2) of this section, a "reasonable investigation" includes, but is not limited to, a search of the records in the Copyright Office; in the case of a musical composition with respect to which performing rights are licensed by a performing rights society, as defined by section 116(e)(3) of Title 17, U.S.C., a "reasonable investigation" also includes a report from that performing rights society identifying the person or persons claiming current ownership of the rights being terminated.

(4) Compliance with the provisions of clauses (2) and (3) of this paragraph (d) will satisfy the service requirements of section 304(c)(4) of Title 17, U.S.C. However, as long as the statutory requirements, have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (3) of this section will not affect the validity of the service.

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 304 (c) of Title 17, U.S.C., shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section (e), errors made in giving the date or registration number referred to in paragraph (b)(1)(ii) of this section, or in complying with the provisions of paragraph (b)(1)(v) of this section, or in describling the precise relationships under clause (2) of paragraph (c) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Recordation.* (1) A copy of the notice of termination will be recorded in the Copyright Office upon payment of the fee prescribed by paragraph (2) of this paragraph (f) and upon compliance with the following provisions:

(i) The copy submitted for recordation shall be a complete and exact duplicate of the notice of termination as served and shall include the actual signature or signatures, or a reproduction of the actual signature or signatures, appearing on the notice; where separate copies of the same notice were served on more than one grantee or successor in title, only one copy need be submitted for recordation; and

(ii) The copy submitted for recordation shall be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice.

(2) For a document consisting of six pages or less, covering no more than one title, the basic recordation fee is $5 if recorded before January 1, 1978, and $10 if recorded after December 31, 1977; in either case an additional charge of 50 cents is made for each page over six and each title over one. The statement referred to in paragraph (f)(1)(ii) of this section will be

considered a part of the document for this purpose.

(3) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee and, if required, the statement referred to in paragraph (f)(1)(ii) of this section, have been received in the Copyright Office. After recordation the document, including any accompanying statement, is returned to the sender with a certificate of record.

(4) Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met.

(Pub. L. 94-553; 17 U.S.C. 304(c); 702; 708(11))

[42 FR 45920, Sept. 13, 1977]

§ 201.11 Notices of identity and signal carriage complement of cable systems.

(a) *Definitions.* (1) An "Initial Notice of Identity and Signal Carriage Complement" or "Initial Notice" is a notice under section 111(d)(1) of Title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "at least one month before the date of commencement of operations of the cable system or within one hundred and eighty days after (October 19, 1976), whichever is later", for any secondary transmission by the cable system to be subject to compulsory licensing.

(2) A "Notice of Change of Identity or Signal Carriage Complement" or "Notice of Change" is a notice under section 111(d)(1) of Title 17 of the United States Code as amended by Pub. L. 94-553 and required by that section to be recorded in the Copyright Office "within thirty days after each occasion on which the ownership or control or signal carriage complement of the cable system changes" for any secondary transmission by the cable system to be subject to compulsory licensing.

(3) A "cable system" is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a "cable system" for copyright purposes, even if the FCC excludes it from being considered a "cable system" because of the number or nature of its subscribers or the nature of its secondary transmissions. The Notices required to be recorded by this section, and the statements of account and royalty fees to be deposited under § 201.17 of these regulations, shall be recorded and deposited by each individual cable system desiring its secondary transmissions to be subject to compulsory licensing. For these purposes, and the purpose of § 201.17 of these regulations, an "individual" cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission in effect: (i) On the date of recordation with the Copyright Office, in the case of the preparation and filing of an Initial Notice of Identity and Signal Carriage Complement or Notice of Change of Identity or Signal Carriage Complement; or (ii) on the last day of the accounting period covered by a Statement of Account, in the case of the preparation and deposit of a Statement of Account and copyright royalty fee. For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are either: (A) In contiguous communities under common ownership or control or (B) operating from one headend.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" if: (i) It is usually carried by the system whenever it is received at the system's headend, and (ii) as a result of monitoring at reasonable times and intervals, it can be expected to be received at the system's headend, with the system's

FM antenna, at least three consecutive hours each day at the same time each day, five or more days a week, for four or more weeks during any calendar quarter, with a strength of not less than fifty microvolts per meter measured at the foot of the tower or pole to which the antenna is attached.

(5) The signals of a primary transmitter are "regularly carried" if they are carried by the cable system for at least one hour each week for thirteen or more consecutive weeks, or if, in the cases described in paragraph (a)(4) of this section, they comprise generally receivable FM radio signals.

(b) *Forms.* The Copyright Office does not provide printed forms for the use of persons recording Initial Notices or Notices of Change.

(c) *Initial Notices.* (1) An Initial Notice of Identity and Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) The designation "Owner", followed by: (A) The full legal name of the owner of the cable system. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner; (B) any other name or names under which the owner conducts or proposes to conduct the business of the cable system; and (C) the full mailing address of the owner. Ownership, other names under which the owner conducts the business of the cable system, and the owner's mailing address shall reflect facts existing on the day the Notice is signed.

(ii) The designation "System", followed by: (A) Any business or trade names used to identify the business and operation of the cable system, unless these names have already been given under the designation "Owner"; and (B) the full mailing address of the system, unless such address is the same as the address given under the designation "Owner". Business or trade names used to identify the business and operation of the system, and the system's mailing address, shall reflect the facts existing on the day the Notice is signed.

(iii) The designation "Area Served", followed by the name of the community or communities served by the system. For this purpose a "community" is the same as a "community unit" as defined in FCC rules and regulations.

(iv) The designation "Signal Carriage Complement", followed by the name and location of the primary transmitter or primary transmitters whose signals are, or are expected to be, regularly carried by the cable system. Carriage of a primary transmitter under FCC rules and regulations in effect on October 19, 1976, which permitted carriage of specific network programs on a part-time basis in certain circumstances (former 47 CFR 76.59(d)(2) and (4); 76.61(e) (2) and (4); and 76.63, referring to 76.61(e) (2) and (4), all of which were deleted June 25, 1981) need not be reported.

(A) The "name" of the primary transmitter(s) shall be given by station call sign, accompanied by a brief statement of the type of signal carried (for example, "TV", "FM", or "AM"). The "location" of the primary transmitter(s) shall be given as the name of the community to which the transmitter is licensed by the Federal Communications Commission (in the case of domestic signals) or with which the transmitter is identified (in the case of foreign signals).

(B) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, the Notice shall identify that portion of its signal carriage as "all-band FM" or the like, and shall separately identify the name and location of each primary transmitter of such signals whose signals are generally receivable by the system. In any case where such generally receivable FM signals cannot be determined at the time of recording of the initial Notice, they shall be subsequently identified in a Special Amendment recorded in compliance with paragraph (e)(3) of this section.

(v) The individual signature of: (A) The owner of the cable system or of a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or (B) a partner, if the owner is a partnership; or (C) an officer of the corporation, if the owner is a corporation. The signature shall be accompanied by the printed or typewritten name of the person signing the Notice, by the date of signature and, if the owner of the cable system is a partnership or corporation, by the title or official position held in the partnership or corporation by the person signing the Notice.

(2) The requirements of paragraph (c)(1) of this section shall apply only to Initial Notices of Identity and Signal Carriage Complement recorded on or after July 31, 1978. Initial Notices recorded before July 31, 1978 shall be governed by the applicable Copyright Office regulations in effect before June 27, 1978.

(d) *Notices of change.* (1) A Notice of Change of Identity or Signal Carriage Complement shall be identified as such by prominent caption or heading, and shall include the following:

(i) In the case of a change of ownership: (A) The designation "Former Owner", followed by the full legal name of the owner of the cable system as given in the Initial Notice recorded by the cable system, or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice;[3] (B) the designation "New Owner", followed by: (*1*) The full legal name of the person who, or partnership or corporation which, now owns the cable system. If the new owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner; (*2*) any other name or names under which the new owner conducts, or proposes to conduct, the business of the cable system; and (*3*) the full mailing address of the new owner; (C) the designation "System", followed by the information required by paragraph (c)(1)(ii) of this section; and (D) the effective date of the change of ownership.

(ii) In the case of a change of signal carriage complement: (A) The designation "Owner", followed by the information called for by paragraph (c)(1)(i) or (d)(1)(i)(B) of this section, as given in the Initial Notice recorded by the cable system or, if an earlier Notice of Change affecting ownership has been recorded by the cable system, as given in the last such Notice;[4] (B) the designation "System", followed by the information required by paragraph (c)(1)(ii) of this section; (C) the names and locations of the primary transmitter or primary transmitters whose signals have been added to or deleted (as shall be stated in the Notice) from the system's signal carriage complement, given as set forth in paragraphs (c)(1)(iv) (A) and (B) of this section; and (D) the approximate date of each such addition or deletion.

(iii) In the case of either a change in ownership or in signal carriage complement, the Notice of Change shall be signed and dated in accordance with paragraph (c)(1)(v) of this section.

(2) Unless accompanying a change in ownership and required to be given by paragraph (d)(1)(i) of this section, a Notice of Change is not required to be recorded to reflect changes occurring on or after February 10, 1978, in: (i) Fictitious or assumed names used by the owner of a cable system for the purpose of conducting the business of the cable system; (ii) trade or business names or styles used to identify the business and operation of the cable system; (iii) mailing addresses of the owner of the cable system or of the system; (iv) the name of the operator of the cable system; or (v) the name of

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[3] In the case of a change of ownership: (i) for which a Notice of Change was not recorded before February 10, 1978 and (ii) which involves a cable system that recorded an Initial Notice or Notice of Change before February 10, 1978 without identifying the owner of the system, the designation "Former Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

[4] In the case of a change of signal carriage complement: (i) for which a Notice of Change was not recorded before February 10, 1978 and (ii) which involves a cable system that recorded an Initial Notice or Notice of Change before February 10, 1978 without identifying the owner of the system, the designation "Owner" shall be followed by the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

the person or entity exercising primary control over the system. A Notice of Change is not required to be recorded to reflect changes in, or in the names of, the community or communities served by the cable system.

(3) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, and which have not recorded an Initial Notice identifying the primary transmitters of FM signals generally receivable by the system, a Notice of Change shall not be required to be recorded to reflect changes in the complement of such signals until the expiration of one hundred and twenty days from the date of recordation of a Special Amendment under paragraph (e)(2) or (e)(3) of this section.

(4) The provisions of paragraphs (d)(1) and (d)(2) of this section shall apply only to Notices of Change recorded on or after July 31, 1978. Notices of Change recorded before July 31, 1978 shall be governed by the applicable Copyright Office regulations in effect before June 27, 1978.

(5) Notice of change in ownership and in signal carriage complement may be combined in one Notice of Change, if the information required under paragraph (d)(1) of this section is given for each change.

(e) *Amendment of Notices*—(1) *General (Permissive) Amendments to Correct Errors or Omissions.* The Copyright Office will record amendments to Initial Notices or Notices of Change submitted to correct an error or omission in the information given in the earlier document. An amendment is not appropriate to reflect developments or changes in facts occurring after the date of signature of an Initial Notice or Notice of Change. An amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement" or "Amendment to Notice of Change of Identity or Signal Carriage Complement"; (ii) identify the specific Notice intended to be amended so that it may be readily located in the records of the Copyright Office; (iii) clearly specify the nature of the amendment to be made; and (iv) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.[5] The recordation of an amendment under this paragraph shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(2) *Special (Required) Amendments for Certain Systems which Recorded Initial Notices before February 10, 1978.* Any cable system which before February 10, 1978, recorded an Initial Notice of Identity and Signal Carriage Complement which identified all or a portion of its signal carriage complement as "all-band FM", "broad-band FM" or the like, or which otherwise did not identify individual primary transmitters of FM signals generally receivable by the system, shall, no later than June 30, 1978, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c)(1)(iv) (A) and (B) of this section. Such amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.[5]

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[5] In the case of an amendment to an Initial Notice or Notice of Change recorded before February 10, 1978 which did not identify the owner of the system, the signature shall be accompanied by the printed or typewritten name of the operator, or person or entity exercising primary control over the system, as given in the Notice sought to be amended.

(3) *Special (Required) Amendments for Certain Cable Systems which Record Initial Notices on or after February 10, 1978.* Any cable system which records an Initial Notice of Identity and Signal Carriage Complement on or after February 10, 1978 and is required by the last sentence of paragraph (c)(1)(iv)(B) of this section to record a special amendment shall, no later than one hundred and twenty days after recordation of the Initial Notice, record an amendment to that Notice identifying the primary transmitter or primary transmitters of FM signals generally receivable by the system as of the date of the amendment in accordance with paragraphs (c)(1)(iv) (A) and (B) of this section. Such amendment shall: (i) Be clearly and prominently identified as an "Amendment to Initial Notice of Identity and Signal Carriage Complement"; (ii) specifically identify the Initial Notice intended to be amended so that it may be readily located in the records of the Copyright Office; and (iii) be signed and dated in accordance with paragraph (c)(1)(v) of this section. The signature shall be accompanied by the printed or typewritten name of the owner of the system as given in the Notice sought to be amended.

(f) *Recordation.* (1) The Copyright Office will record the Notices and amendments described in this section by placing them in the appropriate public files of the Office. The Copyright Office will advise cable systems of errors or omissions appearing on the face of documents submitted to it, and will require that any such obvious errors or omissions be corrected before the documents will be recorded. However, recordation by the Copyright Office shall establish only the fact and date thereof; such recordation shall in no case be considered a determination that the document was, in fact, properly prepared or that all of the requirements to qualify for a compulsory license have been satisfied.

(2) No fee shall be required for the recording of Initial Notices, Notices of Change, or the Special Amendments identified in paragraphs (e)(2) and (e)(3) of this section. A fee of $10 shall accompany any General Amendment permitted by paragraph (e)(1) of this section.

(3) Upon request and payment of a fee of $3, the Copyright Office will furnish a certified receipt for any Notice or amendment recorded under this section.

(17 U.S.C. 111, 702)

[43 FR 27830, June 27, 1978, as amended at 47 FR 21789, May 20, 1982]

§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous states.

(a) Written, nonprofit contracts providing for the equitable sharing of costs of videotapes and their transfer, as identified in section 111(e)(2) of Title 17 of the United States Code as amended by Pub. L. 94-553, will be filed in the Copyright Office by recordation upon payment of the fee prescribed by this section. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of contract; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the contract, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the contract, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 111(e).

(b) For a document consisting of six pages or less the recordation fee is $10; an additional charge of 50 cents is made for each page over six. If titles of works are specified in the contract, an additional charge of 50 cents is made for each title over one.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the

Copyright Office. A document is filed in the Copyright Office and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(Pub. L. 94-553; 17 U.S.C. 111; 702; 708(11))
[42 FR 53961, Oct. 4, 1977]

§ 201.13 Notices of objection to certain noncommercial performances of nondramatic literary or musical works.

(a) *Definitions.* (1) A "Notice of Objection" is a notice, as required by section 110(4) of Title 17 of the United States Code as amended by Pub. L. 94-553, to be served as a condition of preventing the noncommercial performance of a nondramatic literary or musical work under certain circumstances.

(2) For purposes of this section, the "copyright owner" of a nondramatic literary or musical work is the author of the work (including, in the case of a work made for hire, the employer or other person for whom the work was prepared), or a person or organization that has obtained ownership of the exclusive right, initially owned by the author of performance of the type referred to in 17 U.S.C. 110(4). If the other requirements of this section are met, a Notice of Objection may cover the works of more than one copyright owner.

(b) *Form.* The Copyright Office does not provide printed forms for the use of persons serving Notices of Objection.

(c) *Contents.* (1) A Notice of Objection must clearly state that the copyright owner objects to the performance, and must include all of the following:

(i) Reference to the statutory authority on which the Notice of Objection is based, either by citation of 17 U.S.C. 110(4) or by a more general characterization or description of that statutory provision;

(ii) The date and place of the performance to which an objection is being made; however, if the exact date or place of a particular performance, or both, are not known to the copyright owner, it is sufficient if the Notice describes whatever information the copyright owner has about the date and place of a particular performance, and the source of that information unless the source was considered private or confidential;

(iii) Clear identification, by title and at least one author, of the particular nondramatic literary or musical work or works, to the performance of which the copyright owner thereof is lodging objection; a Notice may cover any number of separately identified copyrighted works owned by the copyright owner or owners serving the objection. Alternatively, a blanket notice, with or without separate identification of certain copyrighted works, and purporting to cover one or more groups of copyrighted works not separately identified by title and author, shall have effect if the conditions specified in paragraph (c) (2) of this section are met; and

(iv) A concise statement of the reasons for the objection.

(2) A blanket notice purporting to cover one or more groups of copyrighted works not separately identified by title and author shall be valid only if all of the following conditions are met:

(i) The Notice shall identify each group of works covered by the blanket notice by a description of any common characteristics distinguishing them from other copyrighted works, such as common author, common copyright owner, common publisher, or common licensing agent;

(ii) The Notice shall identify a particular individual whom the person responsible for the performance can contact for more detailed information about the works covered by the blanket notice and to determine whether a particular work planned for performance is in fact covered by the Notice. Such identification shall include the full name and business and residence addresses of the individual, telephone numbers at which the individual can be reached throughout the period between service of the notice and the performance, and name, addresses, and telephone numbers of another individual to contact during that period in case the first cannot be reached.

(iii) If the copyright owner or owners of all works covered by the blanket notice is not identified in the Notice, the Notice shall include an offer to identify, by name and last known address, the owner or owners of any and all such works, upon request made to the individual referred to in paragraph (c)(2)(ii) of this section.

(3) A Notice of Objection must also include clear and prominent statements explaining that:

(i) A failure to exclude the works identified in the Notice from the performance in question may subject the person responsible for the performance to liability for copyright infringement; and

(ii) The objection is without legal effect if there is no direct or indirect admission charge for the performance, and if the other conditions of 17 U.S.C. 110(4) are met.

(d) *Signature and Identification.* (1) A Notice of Objection shall be in writing and signed by each copyright owner, or such owner's duly authorized agent, as required by 17 U.S.C. 110(4)(B)(i).

(2) The signature of each owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(3) If a Notice of Objection is initially served in the form of a telegram or similar communication, as provided by paragraph (e) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) *Service.* (1) A Notice of Objection shall be served on the person responsible for the performance at least seven days before the date of the performance, as provided by 17 U.S.C. 110 (4)(B)(ii).

(2) Service of the Notice may be effected by any of the following methods:

(i) Personal service;

(ii) First-class mail;

(iii) Telegram, cablegram, or similar form of communication, if: (A) The Notice meets all of the other conditions provided by this section; and (B) before the performance takes place, the person responsible for the performance receives written confirmation of the Notice, bearing the actual handwritten signature of each copyright owner or duly authorized agent.

(3) The date of service is the date the Notice of Objection is received by the person responsible for the performance or any agent or employee of that person.

(Pub. L. 94-553; 17 U.S.C. 110(4); 702)

[42 FR 64684, Dec. 28, 1977]

§ 201.14 Warnings of copyright for use by certain libraries and archives.

(a) *Definitions.* (1) A "Display Warning of Copyright" is a notice under paragraphs (d)(2) and (e)(2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An "Order Warning of Copyright" is a notice under paragraphs (d)(2) and (e)(2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Order Warning of Copyright" is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) *Contents.* A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

NOTICE WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) *Form and Manner of Use.* (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

(Pub. L. 94-553; 17 U.S.C. 108; 702)

[42 FR 59265, Nov. 16, 1977]

§ 201.15 Voluntary license to permit reproduction of nondramatic literary works solely for use of the blind and physically handicapped.

(a) *General.* (1) The "blind and physically handicapped" are persons eligible for special loan services of the Library of Congress, as designated by section 135a of Title 2 of the United States Code as amended by Pub. L. 89-552 and regulations of the Library of Congress issued under that section.

(2) This section, and any license granted or exercised under this section, applies only to nondramatic literary works that have previously been published with the consent of the copyright owner.

(b) *Form.* The Copyright Office provides the following form as part of the applications for registration of claims to copyright in nondramatic literary works (Form TX):

REPRODUCTION FOR USE OF BLIND OR PHYSICALLLY HANDICAPPED PERSONS

Signature of this form at space 10, and a check in one of the boxes here in space 8, constitutes a nonexclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

a ☐ Copies and phonorecords; b ☐ Copies only; c ☐ Phonorecords only.

(c) *Terms and conditions.* A copyright owner who consents to the use of a copyrighted work by the Library of Congress for the use of the blind and physically handicapped may accomplish this purpose by checking the appropriate box on the application form, by signing the application form as a whole, and by ksubmitting the application for copyright registration to the Copyright Office. The copyright owner thereby grants a nonexclusive license to the Library of Congress with respect to the work identified in the application, under the terms and conditions set forth in this section.

(1) The work may be reproduced only by or on behalf of the Library of Congress.

(2) The work may not be reproduced in any other form than Braille (or similar tactile symbols), or by a fixation of a reading of the work in phonorecords specifically designed for use of the blind and physically handicapped, or both, as designated by the copyright owner on the application form.

(3) Such copies and phonorecords of the work may be distributed by the Library of Congress solely for the use of the blind and physically handicapped under conditions and guidelines provided by the National Library Service for the Blind and Physically Handicapped of the Library of Congress.

(4) In the case of any conflict with any other right or license given by the copyright owner to the Library of Congress pertaining to the work, the terms and conditions most favorable to the Library of Congress for the benefit of the blind and physically handicapped shall govern.

(5) Copies and phonorecords reproduced and distributed under this license will contain identification of the author and publisher of the work, and copyright notice, as they appear on the copies or phonorecords deposited with the application.

(6) This license is nonexclusive, and the copyright owner is in no way precluded from granting other nonexclusive licenses with respect to reproduction for the use of the blind and physically handicapped, or exclusive licenses for the same purpose on condition they are subject to the nonexclusive license granted to the Library of Congress, or other exclusive or nonexclusive licenses or transfers with respect to reproduction or distribution for other purposes.

(7) All responsibility for the clearing and exercise of the rights granted is that of the Library of Congress.

(d) *Duration of license.* (1) The license is effective upon the effective date of registration for the work and, subject to the conditions and procedures stated in paragraph (d)(2) of this section, continues for the full term of copyright in the work provided in section 302 of Title 17 of the United States Code as amended by Pub. L. 94-553.

(2) Termination of the license may be accomplished by the copyright owner at any time by submitting a written statement of intent to terminate, signed by the copyright owner or by the duly authorized agent of the copyright owner, to the National Library Service for the Blind and Physically Handicapped of the Library of Congress. Termination will become effective 90 days after receipt of the written statement, or at a later time set forth in the statement. Upon the effective date of termination the Library of Congress will be prohibited from reproducing additional copies or phonorecords of the work, or both, without the consent of the copyright owner, but copies or phonorecords, or both, reproduced under authority of the license before the effective date of termination may continue to be utilized and distributed under the terms of the license after its termination.

(17 U.S.C. 408, 702, 710)

[45 FR 13073, Feb. 28, 1980]

§ 201.16 Recordation and certification of coin-operated phonorecord players.

(a) *General.* This regulation prescribes the procedures to be followed by operators of coin-operated phonorecord players who wish to obtain a compulsory license for the public performance of nondramatic musical works, and by the Copyright Office in issuing certificates, under section 116 of Title 17 of the United States Code as amended by Pub. L. 94-553. The terms "operator" and "coin-operated phonorecord player" have the meanings given to them by paragraph (e) of that section.

(b) *Form and content of application.* (1) Each application for a compulsory license under this section shall be on a form prescribed by the Copyright Office and shall contain the following information:

(i) The legal name of the operator, together with any fictitious or assumed name used by the operator for the purpose of conducting the business relating to the coin-operated phonorecord player for which the application is made. If the operator is a partnership, the name of at least one individual partner shall also be given;

(ii) The full address of the operator's place of business, including a specific number and street name or rural route. A post office box number or similar designation will not generally be accepted. The Copyright Office will accept a post office box number or similar designation in special cases if, after consulting with officials of the U.S. Postal Service, the Office concludes that no better address for the operator's place of business is possible.

(iii) The name or a specified designation of the manufacturer of the coin operated phonorecord player for which the application is made;

(iv) The serial number on the coin operated phonorecord player for which the application is made. If a serial number does not appear on that player, all the information required by paragraph (b)(2) of this section shall be given;

(v) The name, address, and telephone number of an individual who may be contacted by the Copyright

Office for further information about the application; and

(vi) The handwritten signature of the operator or the duly authorized agent of the operator. If a business entity is identified as the operator, the signature should be that of an officer if the entity is a corporation or of a partner if the entity is a partnership. The signature shall be accompanied by: (A) A certification that the statements made in the application are correct to the best of the signing person's knowledge; (B) the typed or printed name (and title if the operator is a corporation or partnership) of that person; and (C) the date of signature.

(2) If a serial number is not present on the coin-operated phonorecord player for which the application is made, the application shall also contain the following information for that player:

(i) Its model number if known;

(ii) Its model year and name, if known;

(iii) Whether the sound system employed in the player at the time the application is signed is monaural, stereophonic, quadraphonic, or other;

(iv) The maximum number of phonorecords it is capable of holding; and

(v) The charge to the public for each play at the time the application is signed.

(3) Each application shall be accompanied by a fee in the form of a certified check, cashier's check, or money order, in the following amount:

(i) $25 per player per year in 1982 and 1983;

(ii) $50 per player per year in 1984, 1985, and 1986;

(iii) $50 per player per year in 1987 and each year thereafter, subject to a cost of living adjustment as determined by the Copyright Royalty Tribunal;

(iv) One-half the applicable annual rate for each player on which performances of nondramatic musical works were made available for the first time after July 1 of any year.

(4) A single application may be submitted for multiple players owned or controlled by a particular operator if all the identifying information is given for each player and the proper aggregate fee is submitted for all players covered by the application. However, separate applications must be filed for players covered by the full-year fee and players covered by the half-year fee.

(5) The form prescribed by the Copyright Office for the foregoing purposes is designated "Application for Recordation of Coin-Operated Phonorecord Players (Form JB)". Copies of the form are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.

(6)(i) Where an operator has recorded one or more players in the Copyright Office during a particular year, the Copyright Office will, during the month of December of that year, send to the operator, at the operator's last address shown in the records of the Licensing Division, a "Renewal Application for Recordation of Coin-Operated Phonorecord Players (Form JB/R)". The renewal application will be accompanied by a list of the players recorded by the operator in the Copyright Office earlier during that year; such list will contain the information provided by the operator in its earlier application or applications, and will be based on the assumption that such players were properly identified in the earlier application or applications. The renewal application may be used during the month of January of the immediately succeeding year, in lieu of an application on Form JB, to apply for a compulsory license to cover: (A) Players recorded during the previous year, and (B) any other players operated by the applicant. A renewal application on Form JB/R shall comply with paragraphs (b)(1) through (b)(4) of this section and the instructions accompanying the form; however, a renewal application on Form JB/R may not be used for players covered by a half-year fee.

(ii) Nothing in this paragraph (b)(6) shall be considered to relieve an operator from its obligation to file an application for a compulsory license in compliance with, and within the time periods set forth in, section 116 of Title 17 of the United States Code. In particular, and without limiting the foregoing: (A) The receipt of a renewal application form by an operator does not relieve the operator from its obligation to complete and file the application in the Copyright Office; (B) failure to receive a renewal application form from the Copyright Office or the late arrival of such form does not relieve the operator from its obligation to file an application in the Copyright Office within the statutory time periods; [6] (C) neither the receipt of a renewal application form nor the filing of a renewal application shall relieve the operator from its obligation to identify its players fully and accurately in compliance with this section; and (D) the filing of a renewal application does not relieve the operator from its obligation to file an application to cover any players not included in the renewal application as filed. [7]

(c) *Certificate.* (1) After receipt of the prescribed form and fee, the Copyright Office will issue a certificate containing the information set forth in paragraphs (b)(1)(i) through (iv) and (b)(2) of this section, together with the date of issuance of the certificate and the date of expiration of the license. The date of expiration of the license will be December 31st of the year in which the certificate is issued. Certificates issued upon payment of a half-year fee will be valid only after July 1 of the year in which they are issued and will be so identified.

(2) Each certificate will consist of two parts. The certificate may be affixed in the record selection (title strip) panel of a player or in another position on the player where it can be readily examined by the public, but in any case both parts must be clearly visible.

(3) A certificate issued for a player with auxiliary selectors (wall boxes) shall be affixed to the master control player if the certificate, when so affixed, can be readily examined by the public. If a certificate affixed to the master control player cannot be readily examined by the public, it shall be affixed to one of the auxiliary selectors in a position where it can be so examined.

(4) The Copyright Office will advise jukebox operators of errors or omissions appearing on the face of forms submitted to it, and will require that any such obvious errors or omissions (including errors in the calculation of fees) be corrected before certificates will be issued. However, the issuance of a certificate by the Copyright Office shall establish only the fact, date of issuance, and date of expiration of the certificate; it shall in no case be considered a determination that the application form was properly prepared or that all of the requirements to qualify for a compulsory license have been satisfied.

(d) *Replacement Certificates.* In the case of the loss or destruction of a certificate issued for a particular coin operated phonorecord player, a replacement certificate may be obtained upon submission of a fee of $4 in the form of a certified check, cashier's check or money order, and an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed by an operator or agent in accordance with paragraph (b)(1)(vi) of this section. The affidavit or statement shall describe the circumstances of the loss or destruction and give all the information required by paragraphs (b)(1) (i) through (v) and (b)(2) of this section pertaining to the player for which a replacement certificate is desired. A replacement certificate will be identified by an asterisk following the name of the manufacturer.

(e) *Sale or transfers.* The sale or transfer of a coin-operated phonorecord player during a period for which the certificate has been issued will not require a new application.

(f) *Time limitations.* (1) The Copyright Office may, when it considers it reasonable and appropriate, advise applicants of the time limitations governing the filing of applications and amount of royalty fees as set forth in 17 U.S.C. 116. However, except as set forth in paragraph (f)(2) of this section, the Office will normally not inquire into the date on which performances were actually made available on particular phonorecord players identified in the application or whether such players were previously recorded in the Copyright Office. In the following cases, the Office's acceptance of the application and issuance of a certificate is not to be considered as relieving the operator from any legal consequences arising from the late filing, and shall have only such effect as may be attributed to it by a court of competent jurisdiction: (i) Where, on the date the application covering a particular phonorecord player was received in the Copyright Office, performances had been first made available on that player more than 1 month earlier; and (ii) where, in 1979 and thereafter, a particular phonorecord player had been recorded in the Copyright Office during the previous calendar year, but the application is received after January 31 of the year in question.

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[6] If an operator does not receive a renewal application form (Form JB/R) in time to file it within the statutory time periods, an "Application for Recordation of Coin-Operated Phonorecord Players" shall be filed on Form JB in compliance with paragraphs (b)(1) through (b)(5) of this section.

[7] Application for recordation of players not included on the renewal application as filed shall be made on Form JB ("Application for Recordation of Coin-Operated Phonorecord Players") in compliance with paragraphs (b)(1) through (b)(5) of this section.

(2) In the case of an application that is received in the Copyright Office before June 1 of a particular year, and that is accompanied by a half-year fee for each player identified in the application, the Copyright Office will not issue certificates unless the application is accompanied or supplemented by a statement that performances will not be made available on such players until after July 1 of that year. The statement shall be in the form of a letter addressed to the Licensing Division of the Copyright Office, and shall be signed by the operator named in the application or the duly authorized agent of that operator. If a business entity is the operator, the signature or name shall be that of an officer if the entity is a corporation, or a partner if the entity is a partnership, and shall be accompanied by the organizational title of that person. The statement shall, for all purposes including section 116(b)(1)(B) of Title 17 of the United States Code, be considered a part of the application. The statement described in this paragraph shall not be required in the case of applications covering a particular year received in the Copyright Office after June 1 of that year. In any case, if performances are actually made available for the first time on any players covered by half-year fees on or before July 1 of that year, the Office's acceptance of the application and issuance of a certificate is not to be considered as relieving the operator from any legal consequences arising from the failure to pay the correct fee, and shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(3) If an application received in the Copyright Office after July 1 of any year is accompanied by the prescribed full-year royalty fee for each player identified, the Copyright Office will assume without further inquiry that the application pertains to players on which performances were made available for the first time on or before July 1 of that year.

(g) *Corrections and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (g)(3) of this section, corrections to applications for recordation of coin-operated phonorecord players will be made, and corrected certificates and refunds will be issued, in the following cases:

(i) Where the same player, identified by the same serial number or other identifying information, is listed more than once in the same application, or in two or more applications filed during the same year by or on behalf of the same operator. In these cases the operator named in the application shall be entitled to a refund of any duplicate fee paid;

(ii) Where any of the following information was incorrect at the time the application was signed: (A) The operator's name or address; (B) the serial number or name of the manufacturer of a player; or (C) the identifying information required by paragraph (b)(2) of this section. In any such case the Copyright Office will issue a new certificate containing the correct information. Each corrected certificate will be identified by a double asterisk following the name of the manufacturer.

(iii) Where an application contains information that was correct at the time the application was signed but, as the result of Copyright Office error, the certificate contains incorrect information. In this case the Copyright Office will issue a new certificate containing the correct information; and

(iv) Where an application was accompanied by payment of the prescribed yearly fee for each phonorecord player listed but, with respect to one or more such players, performances were actually made available for the first time after July 1 of the year in which the application was filed. In this case the operator named in the application shall be entitled to a refund of any excess fee paid and the Copyright Office will issue a new certificate for each player subject to the half-year fee.

(2) Corrected certificates or refunds will not be issued after the issuance of original certificates in the following cases:

(i) Where the application was correct on the date on which the application was signed, but changes (for example, a change in the operator's name or address, or the sale or destruction of a player) took place later;

(ii) Where the application identified one or more players that the operator named in the application never owned or operated, or did not own or operate at the time the application was signed, or where, before the application was signed, an identified player had been destroyed or otherwise rendered permanently incapable of being repaired; or

(iii) In any other case not specifically mentioned in paragraph (g)(1) of this section.

(3) Requests for corrections and refunds in the cases mentioned in paragraph (g)(1) of this section shall be made to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must be clearly identifiable as a request for a correction or refund, and, except in the cases described in paragraph (g)(1)(iii) of this section, must be received in the Copyright Office with the appropriate fee, certificate or certificates, and affidavit (where required) before the expiration of 30 days from the date on which the original certificate was issued by the Copyright Office. A request made by telephone or by telegraphic or similar unsigned communication, will be considered to meet this requirement, if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 30-day period, and if a written request meeting all the conditions of this paragraph (g)(3) of this section is also received in the Copyright Office within 14 days after the end of such 30-day period.

(ii) The original application pertaining to each correction must be sufficiently identified in the request so that it can be readily located in the records of the Copyright Office.

(iii) The original certificate pertaining to each correction or refund must be returned to the Copyright Office within the time period prescribed by paragraph (g)(3)(i) of this section. No request will be processed until the applicable certificate is returned; and

(iv) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of duplicate listings (paragraph (g)(1)(i)) a precise and accurate identification of the particular player or players must be given.

(B) In the case of incorrect information given in the application (paragraph (g)(1)(ii) of this section) the request must clearly identify the erroneous information and provide the correct information.

(C) In the case of a certificate that contains erroneous information resulting from Copyright Office error (paragraph (g)(1)(iii) of this section) the error must be clearly indicated.

(D) In the case of overpayment within the meaning of paragraph (g)(1)(iv) of this section, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed by the operator named in the application or the duly authorized agent of that operator in accordance with paragraph (b)(1)(vi) of this section. The affidavit or statement shall: aver that performances of nondramatic musical works were actually made available on the particular phonorecord player(s) for the first time after July 1 of the year covered by the application; give the exact date, including month, day, and year on which such performances were first made available and the location where that event took place; specifically identify the particular phonorecord player(s) involved by the same identifying information as given in the application; and include a brief explanation of the reason for the original submission of a full-year fee for those players.

(v) In those cases where corrections or refunds are to be made under paragraph (g)(1) of this section, the request must be accompanied by a certified check, cashier's check, or money order in the following amount: (A) In the case of a duplicate listing (paragraph (g)(1)(i) of this section): $4 for each application involved; (B) in the case of an error in the operator's name or address (paragraph (g)(1)(ii)(A)) or overpayment within the meaning of paragraph (g)(1)(iv) of this section: $4 for each separate original application pertaining to the certificates to be corrected; and (C) in the case of an error in the serial number or name of the manufacturer of the player, or other identifying information (paragraph (g)(1)(ii) (B) and (C) of this section): $4 for each separate certificate to be corrected. No request will be processed until the appropriate fee is received; and

(vi) The request must be signed by the operator named in the application, or the duly authorized agent of the operator, in accordance with paragraph (b)(1)(vi) of this section.

(4) Each request for correction or refund will be made part of the original application in the records of the Copyright Office. Nothing contained in this paragraph (g) shall be considered to relieve the operator from its full obligations under Title 17 of the United States Code, including penalties for affixing a certificate to a player other than the one it covers.

(h) *Supplemental Certificates for 1982.* (1) In all cases, new supplemental certificates for 1982 must replace those issued prior to June 15, 1982. The Copyright Office will attempt to notify all jukebox operators who recorded a player in 1982 of the need to obtain supplemental certificates. Jukebox operators who for any reason are not notified are not relieved of their obligation to obtain supplemental certificates.

(i) Jukebox operators who were previously issued certificates for 1982 at the $8 rate must apply for supplemental certificates on a form prescribed by the Copyright Office and pay an additional $17 per player on or before July 15, 1982. The form shall be signed in the manner designated in paragraph (b)(vi) of this § 201.16 for original certificates. Copies of the form are free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.

(ii) Jukebox operators who have already submitted $25 fee should notify the Copyright Office to provide them with a supplemental certificate at no additional cost.

(2) Supplemental certificates must be affixed to each player within 10 days after the certificate is issued.

(3) Acceptance by the Copyright Office of applications for supplemental certificates after July 15, 1982, and issuance of corresponding certificates, is not to be considered as relieving the operator from any legal consequences arising from the late filing, and shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(Pub. L. 94-553; secs. 116; 702; 708(11))

[42 FR 63780, Dec. 20, 1977, as amended at 43 FR 50679, Oct. 31, 1978; 43 FR 59379, Dec. 20, 1978; 47 FR 25005, June 9, 1982]

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Coypright Office as required by section 111(d)(2) of Title 17 of the United States Code, as amended by Pub. L. 94-553, in order for secondary transmissions of cable systems to be subject to compulsory licensing.

(b) *Definitions.* (1) Gross receipts for the "basic service of providing secondary transmissions of primary broadcast transmitters" include the full amount of monthly (or other periodic) service fees for television and radio retransmission service, additional set fees, and converter fees. They do not include installation (including connection, relocation, disconnection, or reconnection) fees, charges for pay-cable, security, alarm or facsimile services, or charges for late payments.

(2) A "cable system" and "individual cable system" have the meanings set forth in § 201.11(a)(3) of these regulations.

(3) "FCC" means the Federal Communications Commission.

(4) In the case of cable systems which make secondary transmissions of all available FM radio signals, which signals are not electronically processed by the system as separate and discrete signals, an FM radio signal is "generally receivable" under the conditions set forth in § 201.11(a)(4) of these regulations.

(5) The terms "primary transmission," "secondary transmission," "local service area of a primary transmitter," "distant signal equivalent," "network station," "independent station," and "noncommercial educational station" have the meanings set forth in section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94-553.

(6) A primary transmitter is a "distant" station, for purposes of this section, if the programming of such transmitter is carried by the cable system in whole or in part beyond the local service area of such primary transmitter.

(7) A translator station is, with respect to programs both originally transmitted and retransmitted by it, a primary transmitter for the purposes of this section and § 201.11 of these regulations. A translator station which retransmits the programs of a network station will be considered a network station; a translator station which retransmits the programs of an independent station shall be considered an independent station; and a translator station which retransmits the programs of a noncommercial educational station shall be considered a noncommercial educational station. The determination of whether a translator station should be identified as a "distant" station depends on the local service area of the translator station.

(8) For purposes of this section, the "rules and regulations of the FCC in effect on October 19, 1976," which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place, refers to that portion of former 47 CFR 76.61(b)(2), revised June 25, 1981, and § 76.63 (referring to § 76.61(b)(2)), deleted June 25, 1981, concerning the substitution of a program that is primarily of local interest to the distant community (e.g., a local news or public affairs program).

(9) For purposes of this section, the "rules and regulations of the FCC", which require a cable system to omit the retransmission of a particular program and substitute another program in its place, refers to 47 CFR 76.67.

(c) *Accounting Periods and Deposit.* (1) Statements of Account shall cover semiannual accounting periods of (i) January 1 through June 30, and (ii) July 1 through December 31, and shall be deposited in the Copyright Office, together with the total royalty fee for such accounting periods as prescribed by section 111(d)(2) (B), (C), or (D) of Title 17, by not later than the immediately following August 29, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following March 1, if the Statement of Account covers the July 1 through December 31 accounting period.

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such Statement and fee were physically received in the Copyright Office. Thereafter, the Office will examine the Statement and fee for obvious errors or omissions appearing on the face of the documents, and will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the

result of communications between the Copyright Office and the cable system, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a compulsory license have been satisfied.

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of August 29 or March 1, respectively, will be accepted for whatever legal effect they may have, if any.

(d) *Forms.* (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of distant signal equivalents and the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.

(2) The forms prescribed by the Copyright Office are designated "Statement of Account for Secondary Transmissions By Cable Systems":

(i) Form CS/SA-1—"Short Form" for use by cable systems whose semiannual gross receipts for secondary transmissions total $41,500 or less;

(ii) Form CS/SA-2—"Intermediate Form" for use by cable systems whose semiannual gross receipts for secondary transmissions total between $41,500 and $160,000; and

(iii) Form CS/SA-3—"Long Form" for use by cable systems whose semiannual gross receipts for secondary transmissions total $160,000 or more.

(e) *Contents.* Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner," followed by: (i) The full legal name of the owner of the cable system. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner; (ii) any other name or names under which the owner conducts the business of the cable system; and (iii) the full mailing address of the owner. Ownership, other names under which the owner conducts the business of the cable system, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.[8]

(3) The designation "System," followed by: (i) Any business or trade names used to identify the business and operation of the system, unless these names have already been given under the designation "Owner"; and (ii) the full mailing address of the system, unless such address is the same as the address given under the designation "Owner". Business or trade names used to identify the business and operation of the system, and the system's mailing address, shall reflect the facts existing on the last day of the accounting period covered by the Statement of Account.

(4) The designation "Area Served", followed by the name of the communi-

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[8] In the case of the first Statement of Account deposited by a cable system which has not earlier filed an Initial Notice or Notice of Change under § 201.11 of these regulations identifying the owner of the system, that Statement of Account shall also give the name of the person who, or entity which, was given as the operator or person or entity exercising primary control in the Initial Notice or last Notice of Change.

ty or communities served by the system. For this purpose a "community" is the same as a "community unit" as defined in FCC rules and regulations.

(5) The designation "Channels", followed by the number of channels on which the cable system made secondary transmissions to its subscribers during the period covered by the Statement.

(6) The designation "Secondary Transmission Service: Subscribers and Rates", followed by: (i) A brief description of each subscriber category for which a charge is made by the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters; (ii) the number of subscribers to the cable system in each such subscriber category; and (iii) the charge or charges made per subscriber to each such subscriber category for the basic service of providing such secondary transmissions. Standard rate variations within a particular category should be summarized; discounts allowed for advance payment should not be included. For these purposes: (A) The description, the number of subscribers, and the charge or charges made shall reflect the facts existing on the last day of the period covered by the Statement; and (B) each entity (for example, the owner of a private home, the resident of an apartment, the owner of a motel, or the owner of an apartment house) which is charged by the cable system for the basic service of providing secondary transmissions shall be considered one subscriber.

(7) The designation "Gross Receipts", followed by the gross amount paid to the cable system by subscribers for the basic service of providing secondary transmissions of primary broadcast transmissions during the period covered by the Statement of Account. If the cable system maintains its revenue accounts on an accrual basis, gross receipts for any accounting period includes all such amounts accrued for secondary transmission service furnished during that period, regardless of when accrued: (i) Less the amount of any bad debts actually written-off during that accounting period, excluding bad debts for secondary transmission service furnished before January 1, 1978; (ii) plus the amount of any previously written-off bad debts for secondary transmission service which were actually recovered during that accounting period, excluding bad debt recoveries for secondary transmission service furnished before January 1, 1978. If the cable system maintains its revenue accounts on a cash basis, gross receipts for any accounting period includes all such amounts actually received by the cable system during that accounting period, excluding amounts paid for secondary transmission service furnished before January 1, 1978; however, amounts received before January 1, 1978, for secondary transmission service furnished after that date, are to be considered as if they had been received during the accounting period in which the service covered by such payments was furnished.

(8) The designation "Services Other Than Secondary Transmissions: Rates", followed by a description of each service for which a separate charge was made or established, other than secondary transmission service, which the cable system furnished or made available to subscribers during the period covered by the Statement of Account, together with the amount of such charge. However, no information need be given concerning services furnished at cost. Specific amounts charged for pay cable programming need not be given if the rates are on a variable, per-program basis. (The fact of such variable charge shall be indicated.)

(9) The designation "Primary Transmitters: Television", followed by an identification of all primary television transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, other than primary transmitters of programs carried by the cable system exclusively pursuant to rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting the substitution of signals under certain circumstances, and required to be specially identified by paragraph (e)(11) of this section, together with the information listed below:

(i) The station call sign of the primary transmitter.

(ii) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iii) The number of the channel upon which that primary transmitter broadcasts in the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(iv) A designation as to whether that primary transmitter is a "network station", an "independent station", or a "noncommercial educational station".

(v) A designation as to whether that primary transmitter is a "distant" station.

(vi) If that primary transmitter is a "distant" station, a specification of whether the signals of that primary transmitter are carried: (A) On a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; or (B) on any other basis. If the signals of that primary transmitter are carried on a part-time basis because of lack of activated channel capacity, the Statement shall also include a log showing the dates on which such carriage occurred, and the hours during which such carriage occurred on those dates. Hours of carriage shall be accurate to the nearest quarter-hour, except that, in any case where such part-time carriage extends to the end of the broadcast day of the primary transmitter, an approximate ending hour may be given if it is indicated as an estimate.

(vii) The information indicated by paragraphs (e)(9) (v) and (vi) of this section is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, total $41,500 or less.

(viii) Notwithstanding the requirements of this section, where a cable system carried a distant primary transmitter under FCC rules and regulations in effect on October 19, 1976 which permitted carriage of specific network programs on a part-time basis in certain circumstances (former 47 CFR 76.59 (d)(2) and (4); 76.61(e) (2) and (4); and 76.63, referring to 76.61(e) (2) and (4), all of which were deleted June 25, 1981), carriage of that primary transmitter on that basis need not be reported, and that carriage is to be excluded in computing the distant signal equivalent of that primary transmitter.

(10) The designation "Primary Transmitters: Radio", followed by an identification of primary radio transmitters whose signals were carried by the cable system during the period covered by the Statement of Account, together with the information listed below:

(i) A statement as to whether the cable system carried FM signals which were not electronically processed by the system as separate and discrete signals ("all-band retransmission").

(ii) The station call sign of each:

(A) AM primary transmitter;

(B) FM primary transmitter, the signals of which were electronically processed by the system as separate and discrete signals; and

(C) FM primary transmitter carried on an all-band retransmission basis, the signals of which were generally receivable by the system.

(iii) A designation as to whether the primary transmitter is AM or FM.

(iv) The name of the community to which that primary transmitter is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(v) If the cable system carried FM primary transmitters on an all-band retransmission basis, a clear description of the nature and frequency of the monitoring activities and equipment used during the period covered by the Statement of Account to determine the identity of such transmitters.

(11) A special statement and program log, which shall consist of the information indicated below for all nonnetwork television programming that, during the period covered by the

Statement, was carried in whole or in part beyond the local service area of the primary transmitter of such programming under (i) rules or regulations of the FCC requiring a cable system to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission; or (ii) rules, regulations, or authorizations of the FCC in effect on October 19, 1976, permitting a cable system, at its election, to omit the further transmission of a particular program and permitting the substitution of another program in place of the omitted transmission:

(A) The name or title of the substitute program.

(B) Whether the substitute program was transmitted live by its primary transmitter.

(C) The station call sign of the primary transmitter of the substitute program.

(D) The name of the community to which the primary transmitter of the substitute program is licensed by the FCC (in the case of domestic signals) or with which that primary transmitter is identified (in the case of foreign signals).

(E) The date when the secondary transmission of the substitute program occurred, and the hours during which such secondary transmission occurred on that date accurate to the nearest 5 minutes.

(F) A designation as to whether deletion of the omitted program was permitted by the rules, regulations, or authorizations of the FCC in effect on October 19, 1976, or was required by the rules, regulations, or authorizations of the FCC.

(12) A statement of the total royalty fee payable for the period covered by the Statement of Account, together with a royalty fee analysis which gives a clear, complete, and detailed presentation of the determination of such fee. This analysis shall present in appropriate sequence all facts, figures, and mathematical processes used in determining such fee, and shall do so in such manner as required in the appropriate form so as to permit the Copyright Office to verify readily, from the face of the Statement of Account, the accuracy of such determination and fee. The royalty fee analysis is not required to be given by any cable system whose gross receipts from subscribers for the period covered by the Statement of Account, for the basic service of providing secondary transmissions of primary broadast transmissions, total $41,500 or less.

(13) The name, address, and telephone number of an individual who may be contacted by the Copyright Office for further information about the Statement of Account.

(14) The handwritten signature of: (i) The owner of the cable system or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or (ii) a partner, if the owner is a partnership; or (iii) an officer of the corporation, if the owner is a corporation. The signature shall be accompanied by: (A) The printed or typewritten name of the person signing the Statement of Account; (B) the date of signature; (C) if the owner of the cable system is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Statement of Account; (D) a certification of the capacity of the person signing; and (E) the following statement:

> I certify that I have examined this Statement of Account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(f) *Computation of Distant Signal Equivalents.* (1) A cable system that elects to delete a particular television program and substitute for that program another television program ("substitute program") under rules, regulations, or authorizations of the FCC in effect on October 19, 1976, which permit a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place shall compute the distant signal equivalent ("DSE") of each primary transmitter that broadcasts one or more substitute programs by dividing: (i) The number of the primary transmitter's live, nonnetwork, substitute programs that were carried by the cable system, during the period covered by the Statement of Account, in substitution for programs deleted at the option of the system; by (ii) the number of days in the year in which the substitution occurred.

(2) Where a cable system carries a primary transmitter on a substitute basis, and also on some other basis, the system shall compute a DSE for that primary transmitter based on its carriage on a substitute basis, and shall also compute a DSE for that primary transmitter based on its carriage on the other basis. The DSE for that primary transmitter shall be the total of the DSE's thus computed.

(3)(i) In computing the DSE of a primary transmitter in a particular case of carriage before July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94-553. Four prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried pursuant to the late-night programming rules of the Federal Communications Commission in effect on the date of carriage;

(B) A station is carried pursuant to the specialty programming rules of the Federal Communications Commission in effect on the date of carriage;

(C) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(D) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976.

(ii) In computing the DSE of a primary transmitter in a particular case of carriage on or after July 1, 1981, the cable system may make no prorated adjustments other than those specified as permissible "exceptions and limitations" in the definition of "distant signal equivalent" in the fifth paragraph of section 111(f) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and which remain in force under that provision. Two prorated adjustments, as prescribed in the fourth and fifth sentences of said definition, are permitted under certain conditions where:

(A) A station is carried on a part-time basis where full-time carriage is not possible because the cable system lacks the activated channel capacity to retransmit on a full-time basis all signals which it is authorized to carry; and

(B) A station is carried on a "substitute" basis under rules, regulations, or authorizations of the Federal Communications Commission in effect on October 19, 1976, which permitted a cable system, at its election, to omit the retransmission of a particular program and substitute another program in its place.

(g) *Computation of the Copyright Royalty Fee: Partially Distant Stations.* A cable system located partly within and partly without the local service area of a primary television transmitter ("partially distant station") computes the royalty fee specified in section 111(d)(2)(B) (ii), (iii), and (iv) of the Copyright Act ("DSE fee") by excluding gross receipts from subscribers located within that station's local service area from total gross receipts. A cable system which carries two or more partially distant stations with local service areas that do not exactly coincide shall compute a separate DSE fee for each group of subscribers who are located outside of the local service areas of exactly the same complement of distant stations. Computation of the DSE fee for each subscriber group is to be based on: (1) The total distant signal equivalents of that group's complement of distant stations, and (2) the total gross receipts from that group of subscribers. The copyright royalty fee for that cable system is: (i) the total of the subscriber group royalty fees thus computed, or (ii) 0.675 of 1 percent of the system's gross receipts from all subscribers, whichever is larger.

(h) *Royalty Fee Payment.* The royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account, and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or money order, payable to: Register of Copyrights.

(i) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (i)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete;

(ii) Where, for any reason except that mentioned in paragraph (i)(1)(ii) of this section, calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low; or

(iii) Where, for the semiannual accounting period of January 1, 1978, through June 30, 1978, the total royalty fee deposited was incorrect because the cable operator failed to compute royalties attributable to carriage of late-night, specialty, or part-time programming between January 1, 1978, and February 9, 1978.

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a distant signal) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (i)(1) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, as provided for in paragraph (c)(1) of this section, or before September 1, 1980, whichever is later. A request made by telephone or by telegraphic or similar unsigned communication, will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 60-day period, and if a written request meeting all the conditions of this paragraph (i)(3) is also received in the Copyright Office within 14 days after the end of such 60-day period;

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the cable system, the community or communities served, and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of a request filed under paragraph (i)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information;

(B) In the case of a request filed under paragraph (i)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations;

(C) In the case of a request filed under paragraph (i)(1)(iii) of this section, the request shall be identified as "Transitional and Supplemental Royalty Fee Payment" and include a detailed analysis of the proper royalty calculations;

(iv)(A) All requests filed under this paragraph (i) (except those filed under subparagraph (1)(iii) of this paragraph must be accompanied by a filing fee in the amount of $15 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (i), must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of a certified check, cashier's check, or money order, payable to: Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (i) must be signed by the cable system owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(14) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the cable system owner named in the Statement of Account without regard to the time limitations provided for in paragraph (i)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (i) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve cable systems from their full obligations under Title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(17 U.S.C. 111; 702; 708)

[43 FR 27832, June 27, 1978, as amended at 45 FR 45274, July, 3, 1980; 47 FR 21789, May 20, 1982]

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) *General.* (1) A "Notice of Intention" is a notice identified in section 115(b) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be served on a copyright owner, or in certain cases to be filed in the Copyright Office, to obtain a compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) A separate Notice of Intention shall be served or filed for each nondramatic musical work embodied, or intended to be embodied, in phonorecords made under the compulsory license.

(3) For the purposes of this section, the term "copyright owner," in the case of any work having more than one copyright owner, means any one of the coowners. In such cases, the service of a Notice of Intention on any one of the coowners under paragraph (e)(2) of this section shall be sufficient with respect to all co-owners.

(b) *Form.* The Copyright Office does not provide printed forms for the use of persons serving or filing Notices of Intention.

(c) *Content.* (1) A Notice of Intention shall be clearly and prominently designated, at the head of the notice, as a "Notice of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(i) The full legal name of the person or entity intending to obtain the compulsory license, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(ii) The full address, including a specific number and street name or rural route, of the place of business of the person or entity intending to obtain the compulsory license. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location;

(iii) A statement of the nature of each and every business organization that the person or entity intending to obtain the compulsory license will use for the purpose of conducting the business of making and distributing phonorecords under the license (for example, a corporation, a partnership, or an individual proprietorship); additionally:

(A) If the person or entity intending to obtain the compulsory license is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall so state.

(B) If the person or entity intending to obtain the compulsory license is a corporation that is not registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation.

(C) In all other cases, the Notice shall include the names of each entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity intending to exercise the compulsory license. If a corporate entity is named in response to this paragraph (C), then: If that corporation is registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Notice shall so state; if that corporation is not so registered, the Notice shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of that corporation;

(iv) The fiscal year of the person or entity intending to obtain the compulsory license. If that fiscal year is a calendar year, the Notice shall state that this is the case;

(v) The title of the nondramatic musical work embodied or intended to be embodied in phonorecords made under the compulsory license, and the names of the author or authors of such work if known;

(vi) The types of all phonorecord configurations already made (if any) and expected to be made under the compulsory license (for example: Single disk, long-playing disk, cassette, cartridge, reel-to-reel, or a combination of them);

(vii) The expected date of initial distribution of phonorecords already made (if any) or expected to be made under the compulsory license;

(viii) The name of the principal recording artist or group actually engaged or expected to be engaged in rendering the performances fixed on phonorecords already made (if any) or expected to be made under the compulsory license;

(ix) The catalog number or numbers, and label name or names, used or expected to be used on phonorecords already made (if any) or expected to be made under the compulsory license; and

(x) In the case of phonorecords already made (if any) under the compulsory license, the date or dates of such manufacture.

(2) A "clear statement" of the information listed in paragraph (c)(1) of this section requires a clearly intelligible, legible, and unambiguous statement in the Notice itself and (subject to paragraph (c)(1)(iii)(A) of this section) without incorporation by reference of facts or information contained in other documents or records.

(3) Where information is required to be given by paragraph (c)(1) of this section "if known" or as "expected", such information shall be given in good faith and on the basis of the best knowledge, information, and belief of the person signing the Notice. If so given, later developments affecting

the accuracy of such information shall not affect the validity of the Notice.

(d) *Signature.* The Notice shall be signed by the person or entity intending to obtain the compulsory license. If that person or entity is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that person or entity is a partnership, the signature shall be that of a partner. The signature shall be accompanied by the printed or typewritten name of the person signing the Notice, and by the date of signature.

(e) *Filing and Service.* (1) If, with respect to the nondramatic musical work named in the Notice of Intention, the registration or other public records of the Copyright Office do not identify the copyright owner of such work and include an address for such owner, the Notice shall be filed in the Copyright Office. Notices of Intention submitted for filing shall be accompanied by a fee of $6.00. Notices of Intention will be filed by being placed in the appropriate public records of the Licensing Division of the Copyright Office. The date of filing will be the date when a proper Notice and fee are both received in the Copyright Office. A written acknowledgement of receipt and filing will be provided to the sender. Upon request and payment of an additional fee of $4.00, a Certificate of Filing will be provided to the sender.

(2) If the registration or other public records of the Copyright Office do identify the copyright owner of the nondramatic musical work named in the Notice of Intention and include an address for such owner, the Notice shall be served on such owner by certified mail or by registered mail sent to the last address for such owner shown by the records of the Office; it shall not be necessary to file a copy of the Notice in the Copyright Office in this case.

(3) If the Notice is sent by certified or registered mail to the last address for the copyright owner shown by the records of the Copyright Office and is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, the original Notice as sent shall be filed in the Copyright Office. Notices of Intention submitted for filing under this paragraph (e)(3) shall be submitted to the Licensing Division of the Copyright Office, and shall be accompanied by a brief statement that the Notice was sent to the last address for the copyright owner shown by the records of the Copyright Office but was returned, and by appropriate evidence that it was sent by certified or registered mail to that address. In these cases, the Copyright Office will specially mark its records to consider the date the original Notice was mailed, as shown by the evidence mentioned above, as the date of filing. A written acknowledgement of receipt and filing will be provided to the sender. No filing fee will be required in the case of Notices filed under this paragraph (e)(3). Upon request and payment of a fee of $4.00, a Certificate of Filing will be provided to the sender.

(17 U.S.C. 115; 702; 708)

[45 FR 79045, Nov. 28, 1980]

§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) *Definitions.* (1) A "Monthly Statement of Account" is a statement accompanying monthly royalty payments identified in section 115(c)(3) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be made under the compulsory license to make and distribute phonorecords of nondramatic musical works.

(2) An "Annual Statement of Account" is a statement identified in section 115(c)(3) of Title 17 of the United States Code, as amended by Pub. L. 94-553, and required by that section to be filed for every compulsory license to make and distribute phonorecords of nondramatic musical works.

(3) For the purposes of this section, the term "copyright owner," in the case of any work having more than one copyright owner means any one of the coowners. In such cases, the service of a Statement of Account, on one coowner under paragraph (e)(7) or (f)(7) of this section shall be sufficient with respect to all coowners.

(4) For the purposes of this section, a "compulsory licensee" is a person or entity exercising the compulsory license to make and distribute phonorecords of nondramatic musical works as provided under section 115 of Title 17 of the United States Code, as amended by Pub. L. 94-553.

(5) A phonorecord is considered "voluntarily distributed" if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord. For this purpose, and subject to the provisions of paragraph (d) of this section, a compulsory licensee shall be considered to have "permanently parted with possession" of a phonorecord made under the license:

(i) In the case of phonorecords relinquished from possession for purposes other than sale, at the time at which the compulsory licensee actually first parts with possession;

(ii) In the case of phonorecords relinquished from possession for purposes of sale without a privilege of returning unsold phonorecords for credit or exchange, at the time at which the compulsory licensee actually first parts with possession;

(iii) In the case of phonorecords relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange: (A) At the time when revenue from a sale of the phonorecord is "recognized" by the compulsory licensee; or (B) nine months from the month in which the compulsory licensee actually first parted with possession, whichever occurs first. For these purposes, a compulsory licensee shall be considered to "recognize" revenue from the sale of a phonorecord when sales revenue would be recognized in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board, whichever would cause sales revenue to be recognized first.

(6) A "phonorecord reserve" comprises the number of phonorecords, if any, that have been relinquished from possession for purposes of sale in a given month accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have not been considered voluntarily distributed during the month in which the compulsory licensee actually first parted with their possession. The initial number of phonorecords comprising a phonorecord reserve shall be determined in accordance with generally accepted accounting principles as expressed by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board.

(7) A "negative reserve balance" comprises the aggregate number of phonorecords, if any, that have been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, and that have been returned to the compulsory licensee, but because all available phonorecord reserves have been eliminated, have not been used to reduce a phonorecord reserve.

(b) *Accounting Requirements Where Sales Revenue is "Recognized".* Where under paragraph (a)(5)(iii)(A) of this section, revenue from the sale of phonorecords is "recognized" during any month after the month in which the compulsory licensee actually first parted with their possession, said compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords for which revenue is being "recognized," as follows:

(1) If the number of phonorecords for which revenue is being "recognized" is smaller than the number of phonorecords comprising the earliest eligible phonorecord reserve, this phonorecord reserve shall be reduced by the number of phonorecords for which revenue is being "recognized." Subject to the time limitations of subparagraph (B) of this § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(2) If the number of phonorecords for which revenue is being "recognized" is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorec-

ords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve and continuing to the next succeeding phonorecord reserves, that are completely offset by phonorecords for which revenue is being "recognized." Said licensee shall then reduce the next succeeding phonorecord reserve by the number of phonorecords for which revenue is being "recognized" that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of subparagraph (B) of this § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(3) If the number of phonorecords for which revenue is being "recognized" equals the number of phonorecords comprising all eligible phonorecord reserves, the person or entity exercising the compulsory license shall eliminate all of the phonorecord reserves.

(c) *Accounting Requirements for Offsetting Phonorecord Reserves with Returned Phonorecords.* (1) In the case of a phonorecord that has been relinquished from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section, where the phonorecord is returned to the compulsory licensee for credit or exchange before said compulsory licensee is considered to have "permanently parted with possession" of the phonorecord under paragraph (a)(5) of this section, the compulsory licensee may use such phonorecord to reduce a "phonorecord reserve," as defined in paragraph (a)(6) of this section.

(2) In such cases, the compulsory licensee shall reduce particular phonorecord reserves by the number of phonorecords that are returned during the month covered by the Monthly Statement of Account in the following manner:

(i) If the number of phonorecords that are returned during the month covered by the Monthly Statement is smaller than the number comprising the earliest eligible phonorecord reserve, the compulsory licensee shall reduce this phonorecord reserve by the total number of returned phonorecords. Subject to the time limitations of paragraph (B) of § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(ii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is greater than the number of phonorecords comprising the earliest eligible phonorecord reserve but less than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall first eliminate those phonorecord reserves, beginning with the earliest eligible phonorecord reserve, and continuing to the next succeeding phonorecord reserves, that are completely offset by returned phonorecords. Said licensee shall then reduce the next succeeding phonorecord reserve by the number of returned phonorecords that have not been used to eliminate a phonorecord reserve. Subject to the time limitations of paragraph (B) of § 201.19(a)(5)(iii), the number of phonorecords remaining in this reserve shall be available for use in subsequent months.

(iii) If the number of phonorecords that are returned during the month covered by the Monthly Statement is equal to or is greater than the total number of phonorecords comprising all eligible phonorecord reserves, the compulsory licensee shall eliminate all eligible phonorecord reserves. Where said number is greater than the total number of phonorecords comprising all eligible phonorecord reserves, said compulsory licensee shall establish a "negative reserve balance," as defined in paragraph (a)(7) of this section.

(3) Except where a negative reserve balance exists, a separate and distinct phonorecord reserve shall be established for each month during which the compulsory licensee relinquishes phonorecords from possession for purposes of sale accompanied by a privilege of return, as described in paragraph (a)(5)(iii) of this section. In accordance with paragraph (B) of § 201.19(a)(5)(iii), any phonorecord remaining in a particular phonorecord

reserve nine months from the month in which the particular reserve was established shall be considered "voluntarily distributed"; at that point, the particular monthly phonorecord reserve shall lapse and royalties for the phonorecords remaining in it shall be paid as provided in paragraph (e)(4)(ii) of this section.

(4) Where a negative reserve balance exists, the aggregate total of phonorecords comprising it shall be accumulated into a single balance rather than being separated into distinct monthly balances. Following the establishment of a negative reserve balance, any phonorecords relinquished from possession by the compulsory licensee for purposes of sale or otherwise, shall be credited against such negative balance, and the negative reserve balance shall be reduced accordingly. The nine month limit provided by paragraph (B) of § 201.19(a)(5)(iii) shall have no effect upon a negative reserve balance; where a negative reserve balance exists, relinquishment from possession of a phonorecord by the compulsory licensee at any time shall be used to reduce such balance, and shall not be considered a "voluntary distribution" within the meaning of paragraph (a)(5) of this section.

(5) In no case shall a phonorecord reserve be established while a negative reserve balance is in existence; conversely, in no case shall a negative reserve balance be established before all available phonorecord reserves have been eliminated.

(d) *Situations in Which a Compulsory Licensee is Barred From Maintaining Reserves.* Notwithstanding any other provisions of this section, in any case where, within three years before the phonorecord was relinquished from possession, the compulsory licensee has had final judgment entered against it for failure to pay royalties for the reproduction of copyrighted music on phonorecords, or within such period has been definitively found in any proceeding involving bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar action, to have failed to pay such royalties, that compulsory licensee shall be considered to have "Permanently parted with possession" of a phonorecord made under the license at the time at which that licensee actually first parts with possession. For these purposes the "compulsory licensee," as defined in § 201.19(a)(4), shall include:

(1) In the case of any corporation, the corporation or any director, officer, or beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation;

(2) In all other cases, any entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity exercising the compulsory license.

(e) *Monthly Statements of Account.* (1) *Forms.* The Copyright Office does not provide printed forms for the use of persons serving Monthly Statements of Account.

(2) *General Content.* A Monthly Statement of Account shall be clearly and prominently identified as a "Monthly Statement of Account Under Compulsory License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(i) The period (month and year) covered by the Monthly Statement;

(ii) The full legal name of the compulsory licensee, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(iii) The full address, including a specific number and street name or rural route, of the place of business of the compulsory licensee. A post office box or similar designation will not be sufficient for this purpose, except where it is the only address that can be used in that geographic location;

(iv) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the Monthly Statement and the name of the author or authors of such work or works, if known;

(v) For each nondramatic musical work that is owned by the same copyright owner being served with the Monthly Statement and that is embodied in phonorecords covered by the compulsory license, a detailed statement of all of the information called for in paragraph (e)(3) of this section;

(vi) The total royalty payable for the month covered by the Monthly Statement, computed in accordance with the requirements of this section and the formula specified in paragraph (e)(4) of this section, together with a statement of account showing in detail how the royalty was computed; and

(vii) In any case where the compulsory licensee falls within the provisions of paragraph (d) of this section, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that paragraph.

(3) *Specific Content of Monthly Statements: Identification and Accounting of Phonorecords.* (i) The information called for by paragraph (e)(2)(v) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information:

(A) The number of phonorecords made during the month covered by the Monthly Statement;

(B) The number of phonorecords that, during the month covered by the Monthly Statement and regardless of when made, were either:

Relinquished from possession for purposes other than sale;

Relinquished from possession for purposes of sale without any privilege of returning unsold phonorecords for credit or exchange;

Relinquished from possession for purposes of sale accompanied by a privilege of returning unsold phonorecords for credit or exchange;

Returned to the compulsory licensee for credit or exchange; or

Placed in a phonorecord reserve (except that if a negative reserve balance exists give either the number of phonorecords added to the negative reserve balance, or the number of phonorecords relinquished from possession that have been used to reduce the negative reserve balance);

(C) The number of phonorecords, regardless of when made, that were relinquished from possession during a month earlier than the month covered by the Monthly Statement but that, during the month covered by the Monthly Statement either have had revenue from their sale "recognized" under paragraph (a)(5)(iii) of this section, or were comprised in a phonorecord reserve that lapsed after nine months under paragraph (B) of § 201.19(a)(5)(iii).

(ii) Each of the items of information called for by paragraph (e)(3)(i) of this section shall also include, and if necessary shall be broken down to identify separately, the following:

(A) The catalog number or numbers and label name or names, used on the phonorecords;

(B) The names of the principal recording artist or group engaged in rendering the performances fixed on the phonorecords;

(C) The playing time on the phonorecords of each nondramatic musical work covered by the statement; and

(D) Each phonorecord configuration involved (for example: single disk, long-playing disk, cartridge, cassette, reel-to-reel).

(4) *Royalty Payment and Accounting.* (i) The total royalty called for by paragraph (e)(2)(vi) of this section shall, as specified in section 115(c)(2) of Title 17 of the United States Code, as amended by Pub. L. 94-553, be payable for every phonorecord "voluntarily distributed" during the month covered by the Monthly Statement.

(ii) The amount of the royalty payment shall be calculated in accordance with the following formula:

Step 1: Compute the number of phonorecords shipped for sale with a privilege of return. This is the total of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee, accompanied by the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange. This total does *not* include: (1) Any phonorecords relinquished from possession by the compulsory licensee for purposes of sale without the privilege of return; and (2) any phonorecords relinquished from possession for purposes other than sale.

Step 2: Subtract the number of phonorecords reserved. This involves deducting, from the subtotal arrived at in Step 1, the number of phonorecords that have been placed in the phonorecord reserve for the month covered by the Monthly Statement. The number of phonorecords reserved is determined by multiplying the subtotal from Step 1 by the percentage reserve level established under GAAP. This step should be skipped by a compulsory licensee barred from maintaining reserves under paragraph (d) of this section.

Step 3: Add the total of all phonorecords that were shipped during the month and were not counted in Step 1. This total is the sum of two figures: (1) The number of phonorecords that, during the month covered by the Monthly Statement, were relinquished from possession by the compulsory licensee for purposes of sale, without the privilege of returning unsold phonorecords to the compulsory licensee for credit or exchange; and (2) the number of phonorecords relinquished from possession by the compulsory licensee, during the month covered by the Monthly Statement, for purposes other than sale.

Step 4: Make any necessary adjustments for sales revenue "recognized," lapsed reserves, or reduction of negative reserve balance during the month. If necessary, this step involves adding to or subtracting from the subtotal arrived at in Step 3 on the basis of three possible types of adjustments:

(*a*) *Sales revenue "recognized."* If, in the month covered by the Monthly Statement, the compulsory licensee "recognized" revenue from the sale of phonorecords that had been relinquished from possession in an earlier month, the number of such phonorecords is *added* to the Step 3 subtotal;

(*b*) *Lapsed reserves.* If, in the month covered by the Monthly Statement, there are any phonorecords remaining in the phonorecord reserve for the ninth previous month (that is, any phonorecord reserves from the ninth previous month that have not been offset under FOFI, the first-out-first-in accounting convention, by actual returns during the intervening months), the reserve lapses and the number of phonorecords in it is *added* to the Step 3 subtotal.

(*c*) *Reduction of negative reserve balance.* If, in the month covered by the Monthly Statement, the aggregate reserve balance for all previous months is a negative amount, the number of phonorecords relinquished from possession by the compulsory licensee during that month and used to reduce the negative reserve balance is *subtracted* from the Step 3 subtotal.

Step 5: Multiply by the statutory royalty rate. The total monthly royalty payment is obtained by multiplying the subtotal from Step 3, as adjusted if necessary by Step 4, by the statutory royalty rate of 2¾ cents or ½ cent per minute or fraction of playing time, whichever is larger.

(iii) Each step in computing the monthly payment, including the arithmetical calculations involved in each step, shall be set out in detail in the Monthly Statement.

(5) *Clear Statements.* The information required by paragraphs (e) (2) and (3) of this section involves intelligible, legible, and unambiguous statements in the Monthly Statements of Account itself and without incorporation of facts or information contained in other documents or records.

(6) *Oath and Signature.* Each Monthly Statement of Account shall include the handwritten signature of the compulsory licensee. If that compulsory licensee is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that compulsory licensee is a partnership, the signature shall be that of a partner. The signature shall be accompanied by: (i) The printed or typewritten name of the person signing the Monthly Statement of Account; (ii) the date of signature; (iii) if the compulsory licensee is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Monthly Statement of Account; (iv) a certification of the capacity of the person signing; and (v) the following statement:

> I certify that I have examined this Monthly Statement of Account and that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(7) *Service.* (i) Each Monthly Statement of Account shall be served on the copyright owner to whom or which it is directed, together with the total royalty for the month covered by the Monthly Statement, by certified mail, or by registered mail on or before the 20th day of the immediately succeeding month. It shall not be necessary to file a copy of the Monthly Statement in the Copyright Office.

(ii) (A) In any case where a Monthly Statement of Account is sent by certified mail or registered mail and is returned to the sender because the copyright owner is not located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Monthly Statement of Account, together with any evidence of mailing, may be filed in the Licensing Division of the Copyright Office. Any Monthly Statement of Account submitted for filing in the Copyright Office shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgement of receipt and filing will be provided to the sender.

(B) The Copyright Office will not accept any royalty fees submitted with Monthly Statements of Account under § 202.19(e)(7)(ii).

(C) Neither the filing of a Monthly Statement of Account in the Copyright Office, nor the failure to file such Monthly Statement, shall have effect other than that which may be attributed to it by a court of competent jurisdiction.

(D) No filing fee will be required in the case of Monthly Statements of Account submitted to the Copyright Office under this § 201.19(e)(7)(ii). Upon request and payment of a fee of $4.00, a Certificate of Filing will be provided to the sender.

(iii) A separate Monthly Statement of Account shall be served for each month during which there is any activity relevant to the payment of royalties under section 115 of Title 17, United States Code, as amended by Pub. L. 94-553, and under this section. The Annual Statement of Account identified in paragraph (f) of this section does not replace any Monthly Statement of Account.

(f) *Annual Statements of Account.* (1) *Forms.* The Copyright Office does not provide printed forms for the use of persons serving Annual Statements of Account.

(2) *Annual Period.* Any Annual Statement of Account shall cover the full fiscal year of the compulsory licensee.

(3) *General Content.* An Annual Statement of Account shall be clearly and prominently identified as an "Annual Statement of Account Under Compulsory License for Making and Distributing Phonorecords," and shall include a clear statement of the following information:

(i) The fiscal year covered by the Annual Statement;

(ii) The full legal name of the compulsory licensee, together with all fictitious or assumed names used by such person or entity for the purpose of conducting the business of making and distributing phonorecords;

(iii) A statement of the nature of the business organization used by the compulsory licensee in connection with the making and distribution of phonorecords (for example, a corporation, a partnership, or an individual proprietorship); additionally:

(A) If the compulsory licensee is a corporation registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall state that this is the case.

(B) If the compulsory licensee is a corporation that is not registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall include a list of the names of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of the corporation.

(C) In all other cases, the Annual Statement shall include the names of each entity or individual owning a beneficial interest of twenty-five percent (25%) or more in the entity exercising the compulsory license. If a corporate entity is named in response to this paragraph (C), then: If that corporation is registered with the Securities and Exchange Commission under section 12 of the Securities and Exchange Act of 1934, the Annual Statement shall so state; if that corporation is not so registered, the Annual Statement shall include a list of the corporation's directors and officers, and the names of each beneficial owner of twenty-five percent (25%) or more of the outstanding securities of that corporation;

(iv) The full address, including a specific number and street name or rural route, or the place of business of the compulsory licensee. A post office box or similar designation will not be sufficient for this purpose except where it is the only address that can be used in that geographic location;

(v) The title or titles of the nondramatic musical work or works embodied in phonorecords made under the compulsory license and owned by the copyright owner being served with the Annual Statement and the name of the author or authors of such work or works, if known;

(vi) The playing time of each nondramatic musical work on such phonorecords;

(vii) For each nondramatic musical work that is owned by the same copyright owner being served with the Annual Statement and that is embodied in phonorecords covered by the compulsory license, a detailed statement of all of the information called for in paragraph (f)(4) of this section;

(viii) The total royalty payable for the fiscal year covered by the Annual Statement computed in accordance with the requirements of this section, together with a statement of account showing in detail how the royalty was computed. For these purposes, the applicable royalty as specified in section 115(c)(2) of Title 17 of the United States Code, as amended by Pub. L. 94-553, shall be payable for every phonorecord "voluntarily distributed" during the fiscal year covered by the Annual Statement;

(ix) The total sum paid under Monthly Statements of Account by the compulsory licensee to the copyright owner being served with the Annual Statement during the fiscal year covered by the Annual Statement; and

(x) In any case where the compulsory license falls within the provisions of paragraph (d) of this section, a clear description of the action or proceeding involved, including the date of the final judgment or definitive finding described in that paragraph.

(4) *Specific Content of Annual Statements: Identification and Accounting of Phonorecords.* (i) The information called for by paragraph (f)(3)(vii) of this section shall, with respect to each nondramatic musical work, include a separate listing of each of the following items of information separately stated and identified for each phonorecord configuration (for example, single disk, long playing disk, cartridge, cassette, or reel-to-reel) made:

(A) The number of phonorecords made through the end of the fiscal year covered by the Annual Statement, including any made during earlier years;

(B) The number of phonorecords which have never been relinquished from possession of the compulsory licensee through the end of the fiscal year covered by the Annual Statement;

(C) The number of phonorecords involuntarily relinquished from possession (as through fire or theft) of the compulsory licensee during the fiscal year covered by the Annual Statement and any earlier years, together with a description of the facts of such involuntary relinquishment;

(D) The number of phonorecords "voluntarily distributed" by the compulsory licensee during all years before the fiscal year covered by the Annual Statement;

(E) The number of phonorecords relinquished from possession of the compulsory licensee for purposes of sale during the fiscal year covered by the Annual Statement accompanied by a privilege of returning unsold records for credit or exchange, but not "voluntarily distributed" by the end of that year;

(F) The number of phonorecords "voluntarily distributed" by the compulsory licensee during the fiscal year covered by the Annual Statement, together with: (*1*) The catalog number or numbers, and label name or names, used on such phonorecords; and (*2*) the names of the principal recording artists or groups engaged in rendering the performances fixed on such phonorecords.

(ii) If the information given under paragraphs (A) through (F) of this § 201.19(f)(4)(i) does not reconcile, the Annual Statement shall also include a clear and detailed explanation of the difference. For these purposes, the information given under such paragraphs shall be considered not to reconcile if, after the number of phonorecords given under paragraphs (B), (C), (D), and (E) are added together and that sum is deducted from the number of phonorecords given under paragraph (A), the result is different from the amount given under paragraph (F).

(5) *Clear Statement.* The information required by paragraph (f)(3) of

this section involves intelligible, legible, and unambiguous statements in the Annual Statement of Account itself and [subject to paragraph (f)(3)(iii)(A)] without incorporation by reference of facts or information contained in other documents or records.

(6) *Signature and Certification.* (i) Each Annual Statement of Account shall include the handwritten signature of the compulsory licensee. If that compulsory licensee is a corporation, the signature shall be that of a duly authorized officer of the corporation; if that compulsory licensee is a partnership, the signature shall be that of a partner. The signature shall be accompanied by: (A) The printed or typewritten name of the person signing the Annual Statement of Account; (B) the date of signature; (C) if the compulsory licensee is a partnership or a corporation, by the title or official position held in the partnership or corporation by the person signing the Annual Statement of Account; and (D) a certification of the capacity of the person signing.

(ii)(A) Each Annual Statement of Account shall also be certified by a licensed Certified Public Accountant. Such certification shall consist of the following statement:

> We have examined the attached "Annual Statement of Account Under Compulsory License For Making and Distributing Phonorecords" for the fiscal year ended (date) of (name of the compulsory licensee) applicable to phonorecords embodying (title or titles of nondramatic musical works embodied in phonorecords made under the compulsory license) made under the provisions of section 115 of Title 17 of the United States Code, as amended by Pub. L. 94-553, and applicable regulations of the United States Copyright Office. Our examination was made in accordance with generally accepted auditing standards and accordingly, included tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.
>
> In our opinion the Annual Statement of Account referred to above presents fairly the number of phonorecords embodying each of the above-identified nondramatic musical works made under compulsory license and voluntarily distributed by (name of the compulsory licensee) during the fiscal year ending (date), and the amount of royalties applicable thereto under such compulsory license, on a consistent basis and in accordance with the above cited law and applicable regulations published thereunder.

____

(City and State of Execution)

____

(Signature of Certified Public Accountant or CPA Firm)

____

Certificate Number

____

Jurisdiction of Certificate

____

(Date of Opinion)

(B) The certificate shall be signed by an individual, or in the name of a partnership or a professional corporation with two or more shareholders. The certificate number and jurisdiction are not required if the certificate is signed in the name of a partnership or a professional corporation with two or more shareholders.

(7) *Service.* (i) Each Annual Statement of Account shall be served on the copyright owner to whom or which it is directed by certified mail or by registered mail on or before the twentieth day of the third month following the end of the fiscal year covered by the Annual Statement. It shall not be necessary to file a copy of the Annual Statement in the Copyright Office. An Annual Statement of Account shall be served for each fiscal year during which at least one Monthly Statement of Account was required to have been served under paragraph (e)(7) of this section.

(ii) In any case where the amount required to be stated in the Annual Statement of Account under paragraph (f)(3)(viii) of this section is greater than the amount stated in that Annual Statement under paragraph (f)(3)(ix) of this section, the difference between such amounts shall be delivered to the copyright owner together with the service of the Annual Statement. The delivery of such sum does not require the copyright owner to accept such sum, or to forego any right, relief, or remedy which may be available under law.

(iii) (A) In any case where an Annual Statement of Account is sent by certified mail or registered mail and is returned to the sender because the copyright owner is not located at that address or has refused to accept delivery, or in any case where an address for the copyright owner is not known, the Annual Statement of Account, together with any evidence of mailing, may be filed in the Licensing Division of the Copyright Office. Any Annual Statement of Account submitted for filing shall be accompanied by a brief statement of the reason why it was not served on the copyright owner. A written acknowledgment of receipt and filing will be provided to the sender.

(B) The Copyright Office will not accept any royalty fees submitted with Annual Statements of Account under § 202.19(f)(7)(iii).

(C) Neither the filing of an Annual Statement of Account in the Copyright Office, nor the failure to file such Annual Statement, shall have any effect other than that which may be attributed to it by a court of competent jurisdiction.

(D) No filing fee will be required in the case of Annual Statements of Account submitted to the Copyright Office under this § 201.19(f)(7)(iii). Upon request and payment of a fee of $4, a Certificate of Filing will be provided to the sender.

(g) *Documentation.* All compulsory licensees shall, for a period of at least three years from the date of service of an Annual Statement of Account, keep and retain in their possession all records and documents necessary and appropriate to support fully the information set forth in such Annual Statement and in Monthly Statements served during the fiscal year covered by such Annual Statement.

(17 U.S.C. 115; 702; 703)

[45 FR 79046, Nov. 28, 1980]

§ 201.20 Methods of affixation and positions of the copyright notice on various types of works.

(a) *General.* (1) This section specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Pub. L. 94-553. A notice considered "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be "affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright." As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(2) The provisions of this section are applicable to copies publicly distributed on or after December 1, 1981. This section does not establish any rules concerning the form of the notice or the legal sufficiency of particular notices, except with respect to methods of affixation and positions of notice. The adequacy or legal sufficiency of a copyright notice is determined by the law in effect at the time of first publication of the work.

(b) *Definitions.* For the purposes of this section:

(1) The terms "audiovisual works," "collective works," "copies," "device," "fixed," "machine," "motion picture," "pictorial, graphic, and sculptural works," and their variant forms, have the meanings given to them in section 101 of title 17.

(2) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(3) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a "page" is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms "page" and "leaf" mean the same.

(4) A work is published in "book form" if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined

order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this section, a work need not consist of textual matter in order to be considered published in "book form."

(5) A "title page" is a page, or two consecutive pages facing each other, appearing at or near the front of the copies of a work published in book form, on which the complete title of the work is prominently stated and on which the names of the author or authors, the name of the publisher, the place of publication, or some combination of them, are given.

(6) The meaning of the terms "front," "back," "first," "last," and "following," when used in connection with works published in book form, will vary in relation to the physical form of the copies, depending upon the particular language in which the work is written.

(7) In the case of a work published in book form with a hard or soft cover, the "front page" and "back page" of the copies are the outsides of the front and back covers; where there is no cover, the "front page," and "back page" are the pages visible at the front and back of the copies before they are opened.

(8) A "masthead" is a body of information appearing in approximately the same location in most issues of a newspaper, magazine, journal, review, or other periodical or serial, typically containing the title of the periodical or serial, information about the staff, periodicity of issues, operation, and subscription and editorial policies, of the publication.

(9) A "single-leaf work" is a work published in copies consisting of a single leaf, including copies on which the work is printed or otherwise reproduced on either one side or on both sides of the leaf, and also folders which, without cutting or tearing the copies, can be opened out to form a single leaf. For the purpose of this section, a work need not consist of textual matter in order to be considered a "single-leaf work."

(c) *Manner of Affixation and Position Generally.* (1) In all cases dealt with in this section, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination.

(2) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this section but a person looking in one of those locations would be reasonably certain to find a notice in another somewhat different location, that notice will be acceptable under this section.

(d) *Works Published in Book Form.* In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable:

(1) The title page, if any;

(2) The page immediately following the title page, if any;

(3) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;

(4) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;

(5) The first page of the main body of the work;

(6) The last page of the main body of the work;

(7) Any page between the front page and the first page of the main body of the work, if: (i) There are no more than ten pages between the front page and the first page of the main body of the work; and (ii) the notice is reproduced prominently and is set apart from other matter on the page where it appears;

(8) Any page between the last page of the main body of the work and back page, if: (i) There are no more than ten pages between the last page of the main body of the work and the back page; and (ii) the notice is reproduced prominently and is set apart from the other matter on the page where it appears.

(9) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (d)(1) through (8) of this section, a notice is acceptable if it is located: (i) As a part of, or adjacent

to, the masthead; (ii) on the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page; or (iii) adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or serial and any combination of the volume and issue number and date of the issue.

(10) In the case of a musical work, in addition to any of the locations listed in paragraphs (d)(1) through (9) of this section, a notice is acceptable if it is located on the first page of music.

(e) *Single-Leaf Works.* In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

(f) *Contributions to Collective Works.* For a separate contribution to a collective work to be considered to "bear its own notice of copyright," as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

(1) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears: (i) Under the title of the contribution on that page; (ii) adjacent to the contribution; or (iii) on the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

(2) Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears: (i) Under a title appearing at or near the beginning of the contribution; (ii) on the first page of the main body of the contribution; (iii) immediately following the end of the contribution; or (iv) on any of the pages where the contribution appears, if: (A) The contribution is reproduced on no more than twenty pages of the collective work; (B) the notice is reproduced prominently and is set apart from other matter on the page where it appears; and (C) through format, wording, or both, the application of the notice to the particular contribution is made clear;

(3) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (f)(1) and (2) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(4) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to "bear its own notice" if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution: (i) On the page bearing the copyright notice for the collective work as a whole, if any; or (ii) in a clearly identified and readily-accessible table of contents or listing of acknowledgements appearing near the front or back of the collective work as a whole.

(g) *Works Reproduced in Machine-Readable Copies.* For works reproduced in machine-readable copies (such as magnetic tapes or disks, punched cards, or the like, from which the work cannot ordinarily be visually perceived except with the aid of a machine or device,[1] each of the following constitute examples of acceptable methods of affixation and position of notice:

(1) A notice embodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(2) A notice that is displayed at the user's terminal at sign on;

(3) A notice that is continuously on terminal display; or

(4) A legible notice reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(h) *Motion Pictures and Other Audiovisual Works.* (1) The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located: (i) With or near the title; (ii) with the cast, credits, and similar information; (iii) at or immediately following the beginning of the work; or (iv) at or immediately preceding the end of the work.

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[1] Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform) and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

(2) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (h)(1) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

(3) In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in addition to the locations specified in paragraph (h)(1) of this section, on the housing or container, if it is a permanent receptacle for the work.

(i) *Pictorial, Graphic, and Sculptural Works.* The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

(1) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, of the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(2) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(3) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce.

(4) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied: (i) To the reproduction itself; (ii) to the margin, selvage, or reverse side of the material at frequent and regular intervals; or (iii) if the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.

(5) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

(17 U.S.C. 401, 702)

[46 FR 58312, Dec. 1, 1981]

§ 201.22 Advance notices of potential infringement of works consisting of sounds, images, or both.

(a) *Definitions.* (1) An "Advance Notice of Potential Infringement" is a notice which, if served in accordance with section 411(b) of Title 17 of the United States Code, and in accordance with the provisions of this section, enables a copyright owner to institute an action for copyright infringement either before or after the first fixation of a work consisting of sounds, images, or both that is first fixed simultaneously with its transmission, and to enjoy the full remedies of said Title 17 for copyright infringement, provided registration for the work is made within three months after its first transmission.

(2) For purposes of this section, the "copyright owner" of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, is the person or entity that will be considered the author of the work upon its fixation (including, in the case of a work made for hire, the employer or other person or entity for whom the work was prepared), or a person or organization that has obtained ownership of an exclusive right, initially owned by the person or entity that will be considered the author of the work upon its fixation.

(3) A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

(b) *Form.* The Copyright Office does not provide printed forms for the use of persons serving Advance Notices of Potential Infringement.

(c) *Contents.* (1) An Advance Notice of Potential Infringement shall be clearly and prominently captioned "ADVANCE NOTICE OF POTENTIAL INFRINGEMENT" and must clearly state that the copyright owner objects to the relevant activities of the person responsible for the potential infringement, and must include all of the following:

(i) Reference to Title 17, U.S.C. section 411(b) as the statutory authority on which the Advance Notice of Potential Infringement is based;

(ii) The date, specific time, and expected duration of the intended first transmission of the work or works contained in the specific transmission program;

(iii) The source of the intended first transmission of the work or works;

(iv) Clear identification, by title, of the work or works. A single Advance Notice of Potential Infringement may cover all of the works of the copyright owner embodied in a specific transmission program. If any work is untitled, the Advance Notice of Potential Infringement shall include a detailed description of that work;

(v) The name of at least one person or entity that will be considered the author of the work upon its fixation;

(vi) The identity of the copyright owner, as defined in paragraph (a)(2) of this section. If the copyright owner is not the person or entity that will be considered the author of the work upon its fixation, the Advance Notice of Potential Infringement also shall include a brief, general statement summarizing the means by which the copyright owner obtained ownership of the copyright and the particular rights that are owned; and

(vii) A description of the relevant activities of the person responsible for the potential infringement which would, if carried out, result in an infringement of the copyright.

(2) An Advance Notice of Potential Infringement must also include clear and prominent statements:

(i) Explaining that the relevant activities may, if carried out, subject the person responsible to liability for copyright infringement; and

(ii) Declaring that the copyright owner intends to secure copyright in the work upon its fixation.

(d) *Signature and Identification.* (1) An Advance Notice of Potential Infringement shall be in writing and signed by the copyright owner, or such owner's duly authorized agent.

(2) The signature of the owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(3) If an Advance Notice of Potential Infringement is initially served in the form of a telegram or similar communication, as provided by paragraph (e)(2)(iii) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) *Service.* (1) An Advance Notice of Potential Infringement shall be served on the person responsible for the potential infringement at least ten days but not more than thirty days before the first fixation and simultaneous transmission of the work as provided by 17 U.S.C. 411(b)(1).

(2) Service of the Advance Notice may be effected by any of the following methods:

(i) Personal service;

(ii) First-class mail; or

(iii) Telegram, cablegram, or similar form of communication, if: (A) The Advance Notice meets all of the other conditions provided by this section; and (B) before the first fixation and simultaneous transmission take place, the person responsible for the potential infringement receives written confirmation of the Advance Notice, bearing the actual handwritten signature of the copyright owner or duly authorized agent.

(3) The date of service is the date the Advance Notice of Potential Infringement is received by the person responsible for the potential infringement or by any agent or employee of that person.

(17 U.S.C. 411; 702)

[46 FR 28849, May 29, 1981]

§ 201.23 Transfer of unpublished copyright deposits to the Library of Congress.

(a) *General.* This section prescribes rules governing the transfer of unpublished copyright deposits in the custody of the Copyright Office to the Library of Congress. The copyright deposits may consist of copies, phonorecords, or identifying material deposited in connection with registration of claims to copyright under section 408 of Title 17 of the United States Code, as amended by Pub. L. 94-553, 90 Stat. 2541, effective January 1, 1978. These rules establish the conditions under which the Library of Congress is entitled to select deposits of unpublished works for its collections or for permanent transfer to the National Archives of the United States or to a Federal records center in accordance with section 704(b) of Title 17 of the United States Code, as amended by Pub. L. 94-553.

(b) *Selection by the Library of Congress.* The Library of Congress may select any deposits of unpublished works for the purposes stated in paragraph (a) of this section at the time of registration or at any time thereafter; *Provided,* That:

(1) A facsimile reproduction of the entire copyrightable content of the deposit shall be made a part of the Copyright Office records before transfer to the Library of Congress as provided by section 704(c) of Title 17 of the United States Code, as amended by Pub. L. 94-553, unless, within the discretion of the Register of Copyrights, it is considered impractical or too expensive to make the reproduction;

(2) All unpublished copyright deposits retained by the Library of Congress in its collections shall be maintained under the control of the Library of Congress with appropriate safeguards against unauthorized copying or other unauthorized use of the deposits which would be contrary to the rights of the copyright owner in the work under Title 17 of the United States Code, as amended by Pub. L. 94-553; and

(3) At the time selection is made a request for full term retention of the deposit under the control of the Copyright Office has not been granted by the Register of Copyrights, in accordance with section 704(e) of Title 17 of the United States Code, as amended by Pub. L. 94-553.

(17 U.S.C. 702, 704)

[45 FR 41414, June 19, 1980]

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

Sec.
202.1 Material not subject to copyright.
202.2 Copyright notice.
202.3 Registration of copyright.
202.10 Pictorial, graphic, and sculptural works.
202.11—202.16 [Reserved]
202.17 Renewals.
202.18 [Reserved]
202.19 Deposit of published copies of phonorecords for the Library of Congress.
202.20 Deposit of copies and phonorecords for copyright registration.
202.21 Deposit of identifying material instead of copies.

Authority: Sec. 207, 61 Stat. 666; 17 U.S.C. 207, unless otherwise noted.

Source: 24 FR 4956, June 18, 1959, unless otherwise noted.

§ 202.1 Material not subject to copyright.

The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:

(a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;

(b) Ideas, plans, methods, systems, or devices, as distinguished from the particular manner in which they are expressed or described in a writing;

(c) Blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey information;

(d) Works consisting entirely of information that is common property containing no original authorship, such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources.

[24 FR 4956, June 18, 1959, as amended at 38 FR 3045, Feb. 1, 1973]

§ 202.2 Copyright notice.

(a) *General.* (1) With respect to a work published before January 1, 1978, copyright was secured, or the right to secure it was lost, except for works seeking ad interim copyright, at the date of publication, i.e., the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time. The adequacy of the copyright notice for such a work is determined by the copyright statute as it existed on the date of first publication.

(2) If before January 1, 1978, publication occurred by distribution of copies or in some other manner, without the statutory notice or with an inadequate notice, as determined by the copyright statute as it existed on the date of first publication, the right to secure copyright was lost. In such cases, copyright cannot be secured by adding the notice to copies distributed at a later date.

(3) Works first published abroad before January 1, 1978, other than works for which ad interim copyright has been obtained, must have borne an adequate copyright notice. The adequacy of the copyright notice for such works is determined by the copyright statute as it existed on the date of first publication abroad.

(b) *Defects in notice.* Where the copyright notice on a work published before January 1, 1978, does not meet the requirements of Title 17 of the United States Code as it existed on December 31, 1977, the Copyright Office will reject an application for copyright registration. Common defects in the notice include, among others the following:

(1) The notice lacks one or more of the necessary elements (i.e., the word "Copyright," the abbreviation "Copr.", or the symbol ©, or, in the case of a sound recording, the symbol ℗; the name of the copyright proprietor, or, in the case of a sound recording, the name, a recognizable abbreviation of the name, or a generally known alternative designation, of the copyright owner; and, when required, the year date of publication);

(2) The elements of the notice are so dispersed that a necessary element is not identified as a part of the notice; in the case of a sound recording, however, if the producer is named on the label or container, and if no other name appears in conjunction with the notice, his name will be considered a part of the notice;

(3) The notice is not in one of the positions prescribed by law;

(4) The notice is in a foreign language;

(5) The name in the notice is that of someone who had no authority to secure copyright in his name;

(6) The year date in the copyright notice is later than the date of the year in which copyright was actually secured, including the following cases:

(i) Where the year date in the notice is later than the date of actual publication;

(ii) Where copyright was first secured by registration of a work in unpublished form, and copies of the same work as later published without change in substance bear a copyright notice containing a year date later than the year of unpublished registration;

(iii) Where a book or periodical published abroad, for which ad interim copyright has been obtained, is later published in the United States without change in substance and contains a year date in the copyright notice later than the year of first publication abroad:

Provided, however, That in each of the three foregoing types of cases, if the copyright was actually secured not more than one year earlier than the year date in the notice, registration may be considered as a doubtful case.

(7) A notice is permanently covered so that it cannot be seen without tearing the work apart;

(8) A notice is illegible or so small that it cannot be read without the aid of a magnifying glass: *Provided, however,* That where the work itself requires magnification for its ordinary use (e.g., a microfilm, microcard or motion picture) a notice which will be readable when so magnified, will not constitute a reason for rejection of the claim;

(9) A notice is on a detachable tag and will eventually be detached and discarded when the work is put in use;

(10) A notice is on the wrapper or container which is not a part of the work and which will eventually be removed and discarded when the work is put to use; the notice may be on a container which is designed and can be expected to remain with the work;

(11) The notice is restricted or limited exclusively to an uncopyrightable element, either by virtue of its position on the work, by the use of asterisks, or by other means.

[24 FR 4956, June 18, 1959; 24 FR 6163, July 31, 1959, as amended at 37 FR 3055, Feb. 11, 1972; 46 FR 33249, June 29, 1981; 46 FR 34329, July 1, 1981]

§ 202.3 Registration of copyright.

(a) *General.* (1) This section prescribes conditions for the registration of copyright, and the application to be made for registration under sections 408 and 409 of Title 17 of the United States Code, as amended by Pub. L. 94-553.

(2) For the purposes of this section, the terms "audiovisual work", "compilation", "copy", "derivative work", "device", "fixation", "literary work", "motion picture", "phonorecord", "pictorial, graphic and sculptural works", "process", "sound recording", and their variant forms, have the meanings set forth in section 101 of Title 17. The term "author" includes an employer or other person for whom a work is "made for hire" under section 101 of Title 17.

(3) For the purposes of this section, a copyright "claimant" is either:

(i) The author of a work;

(ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.[1]

(b) *Administrative Classification and Application Forms*—(1) *Classes of Works.* For the purpose of registration, the Register of Copyrights has prescribed four classes of works in which copyright may be claimed. These classes, and examples of works which they include, are as follows:

(i) *Class TX: Nondramatic Literary Works.* This class includes all published and unpublished nondramatic literary works. Examples: Fiction; nonfiction; poetry; textbooks; reference works; directories; catalogs; advertising copy; periodicals and serials; and compilations of information.

(ii) *Class PA: Works of the Performing Arts.* This class includes all published and unpublished works prepared for the purpose of being performed directly before an audience or indirectly by means of a device or process. Examples: Musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; and motion pictures and other audiovisual works.

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[1] This category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights under the copyright initially belonging to the author, the contractual right to claim legal title to the copyright in an application for copyright registration.

(iii) *Class VA: Works of the Visual Arts.* This class includes all published and unpublished pictorial, graphic, and sculptural works. Examples: Two dimensional and three dimensional works of the fine, graphic, and applied arts; photographs; prints and art reproductions; maps, globes, and charts; technical drawings, diagrams, and models; and pictorial or graphic labels and advertisements.

(iv) *Class SR: Sound Recordings.* This class includes all published and unpublished sound recordings fixed on and after February 15, 1972. Claims to copyright in literary, dramatic, and musical works embodied in phonorecords may also be registered in this class under paragraph (b)(3) of this section if: (A) Registration is sought on the same application for both a recorded literary, dramatic, or musical work and a sound recording; (B) the recorded literary, dramatic, or musical work and the sound recording are embodied in the same phonorecord; and (C) the same claimant is seeking registration of both the recorded literary, dramatic, or musical work and the sound recording.

(2) *Application Forms.* For the purpose of registration, The Register of Copyrights has prescribed four basic forms to be used for all applications submitted on and after January 1, 1978. Each form corresponds to a class set forth in paragraph (b)(1) of this section and is so designated ("Form TX"; "Form PA"; "Form VA"; and "Form SR"). Copies of the forms are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, D.C. 20559. Applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed which fall into two or more classes, the application should be submitted in the class most appropriate to the type of authorship that predominates in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed [2] the application shall be submitted on Form SR.

(3) *Registration as a Single Work.* (i) For the purpose of registration on a single application and upon payment of a single registration fee, the following shall be considered a single work:

(A) In the case of published works: All copyrightable elements that are otherwise recognizable as self-contained works, that are included in a single unit of publication, and in which the copyright claimant is the same; and

(B) In the case of unpublished works: all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished "collection." For these purposes, a combination of such elements shall be considered a "collection" if: (*1*) The elements are assembled in an orderly form; (*2*) the combined elements bear a single title identifying the collection as a whole; (*3*) the copyright claimant in all of the elements, and in the collection as a whole, is the same; and (*4*) all of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element. Registration of an unpublished "collection" extends to each copyrightable element in the collection and to the authorship, if any, involved in selecting and assembling the collection.

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[2] A "sound recording" does not include the sounds accompanying a motion picture or other audiovisual work (17 U.S.C. 101). For this purpose, "accompanying" does not require physical integration in the same copy. Accordingly, registration may be made for a motion picture or audiovisual kit in Class PA and that registration will cover the sounds embodied in the "sound track" of the motion picture or on disks, tapes, or the like included in the kit. Separate application in Class SR is not appropriate for these elements.

(ii) In the case of applications for registration made under paragraphs (b)(3) and (b)(5) of this section, the "year in which creation of this work was completed", as called for by the application, means the latest year in which the creation of any copyrightable element was completed.

(4) *Group Registration of Related Works.* [Reserved]

(5) *Group Registration of Contributions to Periodicals.* (i) As provided by section 408(c)(2) of Title 17 of the United States Code, as amended by Pub. L. 94-553, a single registration, on the basis of a single application, deposit, and registration fee, may be made for a group of works if all of the following conditions are met:

(A) All of the works are by the same author;

(B) The author of each work is an individual, and not an employer or other person for whom the work was made for hire;

(C) Each of the works first published as a contribution to a periodical (including newspapers) within a twelve-month period;[3]

(D) Each of the works as first published bore a separate copyright notice, and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice; and

(E) The deposit accompanying the application consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published.

(ii) An application for group registration under section 408(c)(2) of Title 17 and this § 202.3(b)(5) shall consist of: (A) A basic application for registration on Form TX, Form PA, or Form VA,[4] which shall contain the information required by the form and its accompanying instructions; (B) an adjunct form prescribed by the Copyright Office and designated "Adjunct Application for Copyright Registration for a Group of Contributions to Periodicals (Form GR/CP)", which shall contain the information required by the form and its accompanying instructions; and (C) a fee of $10 and the deposit required by paragraph (b)(5)(i)(E) of this section.

(6) *One Registration Per Work.* As a general rule only one copyright registration can be made for the same version of a particular work. However:

(i) Where a work has been registered as unpublished, another registration may be made for the first published edition of the work, even if it does not represent a new version;

(ii) Where someone other than the author is identified as copyright claimant in a registration, another registration for the same version may be made by the author in his or her own name as copyright claimant;[5]

(iii) Where an applicant for registration alleges that an earlier registration for the same version is unauthorized and legally invalid, a registration may be made by that applicant; and

(iv) Supplementary registrations may be made, under the conditions of § 201.5 of these regulations, to correct or amplify the information in a registration made under this section.

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[3] This does not require that each of the works must have been first published during the same calendar year; it does require that, to be grouped in a single application, the earliest and latest contributions must not have been first published more than twelve months apart.

[4] The basic application should be filed in the class appropriate to the nature of authorship in the majority of the contributions. However, if any of the contributions consists preponderantly of nondramatic literary material that is in the English language, the basic application for the entire group should be submitted on Form TX.

[5] An "author" includes an employer or other person for whom a work is "made for hire" under 17 U.S.C. 101. This paragraph does not permit an employee or other person working "for hire" under that section to make a later registration in his or her own name. In the case of authors of a joint work, this paragraph does permit a later registration by one author in his or her own name as copyright claimant, where an earlier registration identifies only another author as claimant.

(c) *Application for Registration.* (1) An application for copyright registration may be submitted by any author or other copyright claimant of a work, or the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner.

(2) An application for copyright registration shall be submitted on the appropriate form prescribed by the Register of Copyrights under paragraph (b) of this section, and shall be accompanied by a fee of $10 and the deposit required under 17 U.S.C. 408 and § 202.20 of these regulations.[6] The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (i) A designation of whether the applicant is the author of, or other copyright claimant or owner of exclusive rights in, the work, or the duly authorized agent of such author, other claimant, or owner (whose identity shall also be given); (ii) the handwritten signature of such author, other claimant, owner, or agent, accompanied by the typed or printed name of that person; (iii) a declaration that the statements made in the application are correct to the best of that person's knowledge; and (iv) the date of certification. An application for registration of a published work will not be accepted if the date of certification is earlier than the date of publication given in the application.

(Pub. L. 94-553; secs. 408, 409, 410, 702)

[43 FR 966, Jan. 5, 1978]

§ 202.10 Pictorial, graphic, and sculptural works.

(a) In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form. The registrability of such a work is not affected by the intention of the author as to the use of the work or the number of copies reproduced. The potential availability of protection under the design patent law will not affect the registrability of a pictorial, graphic, or sculptural work, but a copyright claim in a patented design or in the drawings or photographs in a patent application will not be registered after the patent has been issued.

(b) A claim to copyright in a scientific or technical drawing, otherwise registrable as a pictorial, graphic, or sculptural work, will not be refused registration solely by reason of the fact that it is known to form a part of a pending patent application. Where the patent has been issued, however, the claim to copyright in the drawing will be denied copyright registration.

(c) A claim to copyright cannot be registered in a print or label consisting solely of trademark subject matter and lacking copyrightable matter. While the Copyright Office will not investigate whether the matter has been or can be registered at the Patent and Trademark Office, it will register a properly filed copyright claim in a print or label that contains the requisite qualifications for copyright even though there is a trademark on it. However, registration of a claim to copyright does not give the claimant rights available by trademark registrations at the Patent and Trademark Office.

[46 FR 33249, June 29, 1981]

§§ 202.11—202.16 [Reserved]

§ 202.17 Renewals.

(a) *General.* This section prescribes rules pertaining to the application for renewal copyright under section 304(a) of title 17 of the United States Code, as amended by Pub. L. 94-553.

(b) *Definition.* For purposes of this section, the term "posthumous work" means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(c) *Renewal Time-Limits.* (1) For works originally copyrighted between January 1, 1950 and December 31, 1977, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year of the copyright, and runs through December 31, of the 28th year of the copyright. The original copyright term for a published work is computed from the date of first publication; the term for a work originally registered in unpublished form is computed from the date of registration in the Copyright Office. Unless the required applicaton and fee are received in the Copyright Office during the prescribed period before the first term of copyright expires, the copyright in the unrenewed work terminates at the expiration of twenty-eight years from the end of the calendar year in which copyright was originally secured. The Copyright Office has no discretion to extend the renewal time limits.

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[6] In the case of applications for group registration of contributions to periodicals under paragraph (b)(5) of this section, the deposit shall comply with paragraph (b) (5) (i) (E). Only one $10 fee is required in such cases.

(2) The provisions of paragraph (c)(1) of this section are subject to the following qualification: In any case where the year date in the notice on copies distributed by authority of the copyright owner is earlier than the year of first publication, claims to renewal copyright must be registered within the last year of the original copyright term, which begins on December 31 of the 27th year from the year contained in the notice, and runs through December 31 of the 28th year from the year contained in the notice.

(3) Whenever a renewal applicant has cause to believe that a formal application for renewal (Form RE), and in the case of works under paragraph (d)(2) of this section, an accompanying affidavit and submission relating to the subsistence of first-term copyright, if sent to the Copyright Office by mail, might not be received in the Copyright Office before expiration of the time limits provided by 17 U.S.C., section 304(a), he or she may apply for renewal registration by telegraphic or similar unsigned written communication. An application made by this method only will be accepted if: (i) The message is received in the Copyright Office within the specified time limits; (ii) the applicant adequately identifies the work involved, the date of first publication or original registration, the name and address of the renewal claimant, and the statutory basis of the renewal claim; (iii) the fee for renewal registration, if not already on deposit, is received in the Copyright Office before the time for renewal registration has expired; and (iv) a formal application for renewal (Form RE), and in the case of works under paragraph (d)(2) of this section, an accompanying affidavit and submission relating to subsistence of the first-term copyright are also received in the Copyright Office before February 1 of the following year.

(d) *Original Registration.* (1) Except as provided by paragraph (d)(2) of this section, copyright in a work will not be registered for a renewal term unless an original registration for the work has been made in the Copyright Office.

(2) An original registration in the Copyright Office is not a condition precedent for renewal registration in the case of a work in which United States copyright subsists by virtue of section 9(c) of title 17 of the United States Code, in effect on December 31, 1977 (which implemented the Universal Copyright Convention) provided, however, that the application for renewal registration is accompanied by:

(i) An affidavit identified as "Renewal Affidavit for a U.C.C. Work" and containing the following information:

(A) The date of first publication of the work;

(B) The place of first publication of the work;

(C) The citizenship of the author on the date of first publication of the work;

(D) The domicile of the author on the date of first publicaton of the work;

(E) An averment that, at the time of first publication, all the copies of the work published under the authority of the author or other copyright proprietor bore the symbol © accompanied by the name of the copyright proprietor and the year of first publication, and that United States copyright subsists in the work;

(F) The handwritten signature of the renewal claimant or the duly authorized agent of the renewal claimant. The signature shall (*1*) be accompanied by the printed or typewritten name of the person signing the affidavit and by the date of the signature;

and (*2*) shall be immediately preceded by the following printed or typewritten statement in accordance with section 1746 of title 28 of the United States Code: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(ii) A submission relating to the notice of copyright and copyrightable content which shall be, in descending order of preference, comprised of:

(A) One complete copy of the work as first published; or

(B) (*1*) A photocopy of the title page of the work as first published, and

(*2*) A photocopy of the page of the work as first published bearing the copyright notice, and

(*3*) A specification as to the location, relative to each other, of the title and notice pages of the work as first published, if the pages are different, and

(*4*) A brief description of the copyrightable content of the work, and

(*5*) An explanation of the inability to submit one complete copy of the work as first published; or

(C) A statement describing the position and contents of the copyright notice as it appeared on the work as first published, and a brief description of the copyrightable content. The statement shall be made and signed in accordance with paragraph (d)(2)(i)(F) of this section and shall also include an explanation of the inability to submit either one complete copy of the work as first published or photocopies of the title and notice pages of the work as first published.

(e) *Application for Renewal Registration.* (1) Each application for renewal registration submitted on or after January 1, 1978 shall be furnished on Form RE. Copies of Form RE are available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, Washington, D.C. 20559.

(2) (i) An application for renewal registration may be submitted by any eligible renewal claimant as specified in paragraph (f) of this section or by the duly authorized agent of any such claimant.

(ii) An application for renewal registration shall be accompanied by a fee of $6. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (A) A designation of whether the applicant is the renewal claimant, or the duly authorized agent of such claimant (whose identity shall also be given); (B) the handwritten signature of such claimant or agent, accompanied by the typewritten or printed name of that person; (C) a declaration that the statements made in the application are correct to the best of that person's knowledge; and (D) the date of certification.

(iii) In the case of an application for renewal registration for a foreign work protected under the U.C.C. which has not been the subject of an original copyright registration, the application shall be accompanied by a "Renewal Affidavit for a U.C.C. Work" and a submission relating to the notice of copyright and the copyrightable content in accordance with paragraph (d)(2) of this section.

(3) Once a renewal registration has been made, the Copyright Office will not accept a duplicate application for renewal registration on behalf of the same renewal claimant.

(f) *Renewal Claimants.* (1) Except as otherwise provided by paragraphs (f)(2) and (3) of this section, renewal claims may be registered only in the name(s) of the eligible person(s) falling within one of the following classes of renewal claimants specified in section 304(a) of the copyright law. If the work was a new version of a previous work, renewal may be claimed only in the new matter.

(i) In the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, the renewal claim may be registered in the name of the proprietor;

(ii) In the case of any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author) or by an employer for whom such work is made for hire, the renewal claim may be registered in the name of the proprietor; and

(iii) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the renewal claim may be registered in the name(s) of the following person(s) in descending order of eligibility:

(A) The author of the work, if still living;

(B) The widow, widower, or children of the author, if the author is not living;

(C) The author's executors, if there is a will and neither the author nor any widow, widower, or child of the author is living;

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower, or child of the author is living.

(2) The provisions of paragraph (f)(1) are subject to the following qualification: Notwithstanding the definition of "posthumous work" in paragraph (b) of this section, a renewal claim may be registered in the name of the proprietor of the work, as well as in the name of the appropriate claimant under paragraph (f)(1)(iii), in any case where a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of the claim.

(3) The provisions of paragraphs (f)(1)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where: (A) The author has left a will which names no executor; (B) the author has left a will which names an executor who cannot or will not serve in that capacity; or (C) the author has left a will which names an executor who has been discharged upon settlement of the estate or removed before the estate has been completely administered, the renewal claim may be registered either in the name of an administrator cum testamento annexo (administrator c.t.a.) or an administrator de bonis non cum testamento annexo (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction;

(ii) In any case described in paragraph (f)(3)(i) of this section, except in the case where the author has left a will without naming an executor and a court appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of the conflicting renewal claims in these cases should not be interpreted as evidencing the validity of either claim.

(17 U.S.C. 304, 205, 702, and 708)

[46 FR 58671, Dec. 3, 1981]

§ 202.18 [Reserved]

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of Title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of Title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) (i) The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Acquisitions and Processing Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are established in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases: (A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and (B) when a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Acquisitions and Processing Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container). In the case of a musical composition published in copies only, or in both copies and phonorecords: (i) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and (ii) if the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy. In the case of a motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copies", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of Title 17.

(4) "Title 17" means Title 17 of the United States Code, as amended by Pub. L. 94-553.

(c) *Exemptions from deposit requirements.* The following categories of material are exempt from the deposit requirements of section 407(a) of Title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addressses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated data bases, published in the United States only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide

films and works published in any variety of microform), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textile and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services.

(8) Tests, and answer material for tests, when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole, from the applicable deposit requirements for the collective work.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if: (i) Registration for the work was made under 17 U.S.C. 403 before the work was published in the United States: or (ii) registration for the work was made under 17 U.S.C. 406 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture, from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(d) *Nature of required deposit.* (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of Title 17 shall consist of (i) in the case of published works other than sound recordings, two complete copies of the best edition; and (ii) in the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion pictures, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit for a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library with respect to such copies. In the event of termination of such an agreement by the Library it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(v) In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies in the United States took place by rental, lease, or lending, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Grant an exemption from the deposit requirements of section 407(a) of Title 17 on an individual basis for single works or series or groups of works; or (ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or (iii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit earlier made under the grant of special relief.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of Title 17 unless they are accompanied by: (i) An application for registration of claim to copyright, or (ii) a clear written request that they be held for connection with a separately forwarded application. Copies or phonorecords deposited without such an accompanying application or written request will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of Title 17 or § 202.20 of these regulations. Any written request that copies or phonorecords be held for connection with a separately forwarded application must appear in a letter or similar document accompanying the deposit; a request or instruction appearing on the packaging, wrapping or container for the deposit will not be effective for this purpose.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of Title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a certificate of receipt for the deposit of copies or phonorecords of a work under this section. Certificates of receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a certificate of receipt must be in writing and accompanied by a fee of $2. A certificate of receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

(17 U.S.C. 407, 408, 702)

[43 FR 41979, Sept. 19, 1978]

§ 202.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of Title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of Title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of a work; has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) A "complete" copy or phonorecord means the following:

(i) *Unpublished works.* Subject to the requirements of paragraph (vi) of this § 202.20(b)(2), a "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought;

(ii) *Published works.* Subject to the requirements of paragraphs (iii) through (vi) of this § 202.20(b)(2), a "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter. However, even where certain physically separable elements included in the applicable unit of publication are missing from the deposit, a copy or phonorecord will be considered "complete" for purposes of registration where: (A) The copy or phonorecord deposited contains all parts of the work for which copyright registration is sought; and (B) the removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and (C) the work is exempt from the mandatory deposit requirements under section 407 of Title 17 of the United States Code and § 202.19(c) of these regulations, or the copy deposited consists entirely of a container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptacle acceptable for deposit under paragraph (c)(2) of this section;

(iii) *Contributions to collective works.* In the case of a published contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution;

(iv) *Sound recordings.* In the case of published sound recordings, a "complete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations;

(v) *Musical scores.* In the case of a musical composition published in copies only, or in both copies and phonorecords: (A) If the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and (B) if the only publication of copies took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy;

(vi) *Motion pictures.* In the case of a published or unpublished motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copy," "collective work," "device," "fixed," "literary work," "machine," "motion picture," "phonorecord," "publication," "sound recording," "transmission program," and "useful article," and their variant forms, have the meanings given to them in section 101 of Title 17.

(4) A "secure test" is a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) "Title 17" means Title 17 of the United States Code, as amended by Pub. L. 94-553.

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considered as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(c) *Nature of required deposit.* (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of Title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords: (A) Published three-dimensional cartographic representations of area, such as globes and relief models; (B) published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing; (C) published greeting cards, picture postcards, and stationery; (D) lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or more authors; (E) published contributions to a collective work; (F) musical compositions published in copies only, or in both copies and phonorecords, if the only publication of copies took place by rental, lease, or lending; (G) published multimedia kits that are prepared for use in systematic instructional activities and that include literary works, audiovisual works, sound recordings, or any combination of such works; and (H) works exempted from the requirement of depositing identifying material under § 202.20(c)(2)(ix)(B)(*5*) of these regulations.

(ii) *Motion pictures.* In the case of published motion pictures, the deposit of one complete copy will suffice in lieu of two copies. The deposit of a copy or copies for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library of Congress with respect to such copies. In the event of termination of such an agreement by the Library, it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement. In the case of unpublished motion pictures (including television transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy.

(iii) *Holograms.* In the case of any work deposited in the form of a hologram, the copy or copies shall be accompanied by: (A) Precise instructions for displaying the image fixed in the hologram; and (B) photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image. The number of sets of instructions and identifying material shall be the same as the number of copies required.

(iv) *Certain pictorial and graphic works.* In the case of any unpublished pictorial or graphic work, deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of deposit of an actual copy. In the case of a published pictorial or graphic work, deposit of one complete copy, or of identifying material in compliance with § 202.21 of these regulations, may be made and will suffice in lieu of deposit of two actual copies where an individual author is the owner of copyright, and either: (A) Less than five copies of the work have been published; or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies except under the conditions of paragraph (c)(2)(ix)(B)(*6*) of this section.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: *Provided,* That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Machine-readable works.* In cases where an unpublished literary work is fixed, or a published literary work is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device,[1] the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last 25 pages or equivalent units of the program if reproduced on paper, or at least the first and last 25 pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any.

(B) For published and unpublished automated data bases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes: (*1*) "Identifying portions" shall mean either the first and last 25 pages or equivalent units of the work if reproduced on paper, or at least the first and last 25 pages or equivalent units of work if reproduced on microform, or, in the case of automated data bases comprising separate and distinct data files, representative portions of each separate data file consisting of either 50 complete data records from each file or the entire file, whichever is less; and (*2*) "data file" and "file" mean a group of data records pertaining to a common subject matter, regardless of the physical size of the records or the number of data items included in them. (In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each separate file of an automated data base as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the data base; the name and address of the copyright claimant; the name and content of each separate file within the data base, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually perceptible copyright notice is placed on any copies of the work (such as magnetic tape reels) or their container, a sample of such notice must also accompany the statement.

(viii) *Works reproduced in or on sheetlike materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheetlike materials such as textile and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as wearing apparel, furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with

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[1] Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

§ 202.21 of these regulations instead of a copy.

(ix) *Works reproduced in or on three-dimensional objects.* (A) In the following cases the deposit must consist of identifying material complying with § 201.21 of these regulations instead of a copy or copies: (*1*) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form. Examples of such works include statues, carvings, ceramics, moldings, constructions, models, and maquettes; and (*2*) any two-dimensional or three-dimensional work that, if unpublished, has been fixed, or, if published, has been published only in or on jewelry, dolls, toys, games, or any three-dimensional useful article.

(B) In the following cases, the requirements of paragraph (A) of this § 202.20(c)(2)(ix) for the deposit of identifying material shall not apply: (*1*) Works that are reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics; (*2*) three-dimensional cartographic representations of area, such as globes and relief models; (*3*) works that have been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works; (*4*) published works exempt from the deposit of copies under section 407 of Title 17 and § 202.19(c) of these regulations, where the "complete" copy of the work within the meaning of paragraph (b)(2) of this section consists of a reproduction of the work on two-dimensional materials such as paper or fabrics; (*5*) published works consisting of multiple parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than 12 x 24 x 6 inches, and that include among the copyrightable elements of the work, in addition to any copyrightable element on the box or other container, three or more three-dimensional, physically separable parts; and (*6*) works reproduced on three-dimensional containers or holders such as boxes, cases, and cartons, where the container or holder can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage, and the copy, when flattened, does not exceed 96 inches in any dimension.

(x) *Soundtracks.* For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with § 202.21 of these regulations will suffice in lieu of an actual copy or copies of the motion picture.

(xi) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds ninety-six inches in any dimension, identifying material complying with § 202.21 of these regulations must be submitted instead of an actual copy or copies.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section; (ii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or (iii) permit the deposit of an actual copy or copies, in lieu of the identifying material otherwise required by this section.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19(e) of these regulations. Whether so combined or made solely under this paragraph, such requests

shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit or registration earlier made under the grant of special relief.

(e) *Use of copies and phonorecords deposited for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of Title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, or connected with such an application under the conditions set forth in § 202.19(f)(1) of these regulations.

(17 U.S.C. 407, 408, 702)

[43 FR 41979, Sept. 19, 1978]

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* Subject to the specific provisions of paragraphs (f) and (g) of this section, in any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations for published or unpublished works, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material shall reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show clearly the entire copyrightable content of the work for which deposit is being made, or for which registration is being sought, shall be submitted. Except in cases falling under the provisions of § 202.19(d)(2)(iii) or § 202.20(c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* All pieces of identifying material (except separate drawings or similar reproductions of copyright notices deposited under the second sentence of paragraph (e) of this section) must be of uniform size. Photographic transparencies must be at least 35 mm in size and, if such transparencies are 3 x 3 inches or less, must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. The Copyright Office prefers that transparencies larger than 3 x 3 inches be mounted in a way that facilitates their handling and preservation, and reserves the right to require such mounting in particular cases. All types of identifying material other than photographic transparencies must be not less than 3 x 3 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be large enough to show clearly the entire copyrightable content of the work.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work and an exact measurement of one or more dimensions of the work.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted. Such reproduction shall be no smaller than 3 x 3 inches and no larger than 9 x 12 inches, and shall show the exact appearance and content of the notice, and its specific position on the work.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy or copies of the motion picture shall consist of: (1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and (2) photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any. The provisions of paragraphs (b), (c), (d), and (e) of this § 202.21 do not apply to identifying material deposited under this paragraph (f).

(g) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either: (1) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and a description of the motion picture; or (2) a set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture. In either case the "description" may be a continuity, a pressbook, or a synopsis but in all cases it must include: (i) The title or continuing title of the work, and the episode title, if any; (ii) the nature and general content of the program; (iii) the date when the work was first fixed and whether or not fixation was simultaneous with first transmission; (iv) the date of first transmission, if any; (v) the running time; and (vi) the credits appearing on the work, if any. The provisions of paragraphs (b), (c), (d), and (e) of this § 202.21 do not apply to identifying material submitted under this paragraph (g).

(17 U.S.C. 407, 408, 702.)

[43 FR 41983, Sept. 19, 1978]

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

ORGANIZATION

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PROCEDURES

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AUTHORITY: Copyright Act, Pub. L. 94-553; 90 Stat. 2541-2602 (17 U.S.C. 101-710).

SOURCE: 43 FR 774, Jan. 4, 1978, unless otherwise noted.

ORGANIZATION

§ 203.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of Title 5, United States Code, as amended.

§ 203.2 Authority and functions.

(a) The administration of the copyright law was entrusted to the Library of Congress by an act of Congress in 1870, and the Copyright Office has been a separate department of the Library since 1897. The statutory functions of the Copyright Office are contained in and carried out in accordance with the Copyright Act. Pub. L. 94-553 (90 Stat. 2541-2602), 17 U.S.C. 101-710.

§ 203.3 Organization.

The organization of the Copyright Office consists of:

(a) The Office of the Register of Copyrights, which includes the Register of Copyrights and the Assistant Registers. The Register of Copyrights provides overall direction of the work of the Copyright Office. The Register is assisted by Assistant Registers of Copyright, who have delegated responsibilities for particular aspects of the activities of the Copyright Office, by the General Counsel and the legal staff, and by the administrative staff.

(b) The Assistant Register of Copyrights for Registration serves as a deputy to the Register of Copyrights and has oversight of the operating divisions primarily involved in the registration of materials for copyright. These operating divisions are:

(1) The Acquisitions and Processing Division which receives incoming materials, dispatches outgoing materials, establishes controls over fiscal accounts and controls over the collections of the Library of Congress through implementation of the deposit requirements of the Copyright statute.

(2) The Examining Division which examines all applications and material presented to the Copyright Office for registration of original and renewal copyright claims and which determines whether the materials deposited constitutes copyrightable subject matter and whether the other legal and formal requirements of Title 17 have been met.

(c) The Assistant Register of Copyrights for Automation and Records oversees offices and divisions concerned with planning and preparation for application of automation equipment and techniques to appropriate activities in the Copyright Office; preparation, preservation, and service of official copyright records; storage and preservation of copyright deposits; and implementation of licensing provisions in the copyright statute. These offices and divisions are:

(1) The Planning and Technical Office which has immediate responsibility for studies and recommendations concerned with automation of copyright procedures and related organizational studies and for implementation of approved automation applications in the Copyright Office.

(2) The Cataloging Division which prepare the bibliographic description of all copyrighted works registered or received in the Copyright Office, produces catalog cards for such works, and prepares the Catalog of Copyright Entries.

(3) The Information and Reference Division which provides a national copyright information service through the public information office, educates staff and the public on the copyright law, issues and distributes information materials, responds to reference requests regarding copyright matters, prepares search reports based upon copyright records, certifies copies of legal documents concerned with copyright, and maintains liaison with the United States Customs Service, the Department of the Treasury, and the United States Postal Service.

(4) The Licensing Division implements the sections of Pub. L. 94-553 dealing with secondary transmissions of radio and television programs, compulsory licenses for making and distributing phonorecords of nondramatic musical works, public performances through coin-operated phonorecord players, and use of published nondramatic musical, pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

(5) The Records Management Division which develops, services, stores, and preserves the official records and catalogs of the Copyright Office, including applications for registration, biographic and other historical records, and materials deposited for copyright registration that are not selected by the Library of Congress for addition to its collections.

(d) The Office has no field organization.

(e) The Office is presently located in Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Crystal City, Va. 22202. The Public Information Office is located in Room 101. Its hours are 8 a.m. to 4 p.m., Monday through Friday. The phone number of the Public Information Office is: 557-8700. Informational material regarding the copyright law, the registration process, fees, and related information about the Copyright Office and its functions may be obtained free of charge from the Public Information Office upon request.

(f) All Copyright Office forms may be obtained free of charge from the Public Information Office.

PROCEDURES

§ 203.4 Methods of operation.

(a) In accordance with section 552(a)(2) of the Freedom of Information Act, the Copyright Office makes available for public inspection and copying records of copyright registrations and of final refusals to register claims to copyright; statements of policy and interpretations which have been adopted but are not published in the FEDERAL REGISTER; and administrative staff manuals and instructions to the staff that affect a member of the public.

(b) The Copyright Office also maintains and makes available for public inspection and copying current indexes providing identifying information as to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552(a)(2). The Copyright Office has determined that publication of these indexes is unnecessary and impractical. Copies of the indexes will be provided to any member of the public upon request at the cost of reproduction.

(c) The material and indexes referred to in paragraphs (a) and (b) of this section are available for public inspection and copying at the Public Information Office of the Copyright Office, room 101, Building No. 2, Crystal Mall Annex, 1921 Jefferson Davis Highway, Crystal City, Va. 22202, between the hours of 8 a.m. and 4 p.m., Monday thru Friday.

(d) The Supervisory Copyright Information Specialist is responsible for responding to all initial requests submitted under the Freedom of Information Act. Individuals desiring to obtain access to Copyright Office information under the Act should make a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publication Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va. If a request is made by mail, both the request and the envelope carrying it should be plainly marked Freedom of Information Act Request. Failure to so mark a mailed request may delay the Office response.

(e) Records must be reasonably described. A request reasonably describes records if it enables the Office to identify the records requested by any process that is not unreasonably burdensome or disruptive of Office operations. The Supervisory Copyright Information Specialist will, upon request, aid members of the public to formulate their requests in such a manner as to enable the Office to respond effectively and reduce search costs for the requester.

(f) The Office will respond to all properly marked mailed requests and all personally delivered requests within 10 working days of receipt by the Supervisory Copyright Information Specialist. The Office response will notify the requester whether or not the request will be granted. If the request is denied, the written notification will include the basis for the denial and also include the names of all individuals who participated in the determination and a description of procedures available to appeal the determination.

(g) In the event a request is denied and that denial is appealed the Supervisory Copyright Information Specialist will refer the appeal to the General Counsel. Appeals shall be set forth in writing and addressed to the Supervisory Copyright Information Specialist at the address listed in paragraph (d) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the General Counsel or his or her delegate within 20 working days. If, on appeal, the denial is in whole or in part upheld, the written determination will include the basis for the appeal denial and will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(h) In unusual circumstances, the General Counsel may extend the time limits prescribed in paragraphs (f) and (g) of this section for not more than 10 working days. The extension period may be split between the initial request and the appeal but the total period of extension shall not exceed 10 working days. Extensions will be by written notice to the person making the request. The Copyright Office will advise the requester of the reasons for the extension and the date the determination is expected. As used in this paragraph "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are physically separate from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Copyright Office which have a substantial subject matter interest therein.

AVAILABILITY OF INFORMATION

§ 203.5 Inspection and copying.

(a) When a request for information has been approved, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Supervisory Copyright Information Specialist at the address or telephone number listed in § 203.4(d). Such material may be copied manually without charge, and reasonable facilities are available in the Public Information Office for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in paragraphs (a) and (b) of § 203.6.

CHARGES FOR SEARCH FOR REPRODUCTION

§ 203.6 Schedule of fees and method of payment for services rendered.

(a) Fees shall be charged according to the schedule in paragraph (b) of this section for services rendered in responding to requests for Copyright Office records under this section. The Copyright Office will furnish the documents without charge or at a reduced charge where the Office determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where the requester claims indigency. When the request is for a copy of a record for which a specific fee is required under section 708 of Pub. L. 94-553, that fee shall be charged. Copies of Copyright Office publications are offered for sale to the public at prices based on the cost of reproduction and distribution, as required under section 707 of Pub. L. 94-553.

(b) The following charges will be assessed for the services listed:

(1) For copies of certificates of copyright registration, $4,

(2) For copies of all other Copyright Office records not otherwise provided for in this section, $.45 per page for 24 pages or less, and $.35 per page for 25 pages or more, with a minimum fee of $4.00,

(3) For each hour or fraction of an hour spent in searching for a requested record, $10,

(4) For certification of each document, $4,

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost to the Office.

(c) No charge will be made for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may or will be withheld. Normally, no charge will be made if the records requested are not found. However, if the time expended in processing the request is substantial, and if the requester has been notified in advance that the Copyright Office cannot determine if the requested record exists or can be located fees may be charged.

(d) Where it is anticipated that the fees chargeable under this section will amount to more than $50.00, and the requester has not indicated in advance willingness to pay fees as high as are anticipated, the Copyright Office shall furnish the requester an estimate of the anticipated fee. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated fee and agrees to bear it. Such a notification will be transmitted as soon as possible, but in any event, within five working days after the receipt of the initial request. The Supervisory Copyright Information Specialist will, when appropriate, consult with the requester in an effort to formulate the request so as to reduce the total fees chargeable.

(e) Payment should be made by check or money order payable to the Register of Copyrights.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

Sec.

204.1 Purposes and scope.
204.2 Definitions.
204.3 General policy.
204.4 Procedure for notification of the existence of records pertaining to individuals.
204.5 Procedures for requesting access to records.
204.6 Fees.
204.7 Request for correction or amendment of records.
204.8 Appeal of refusal to correct or amend an individual's record.
204.9 Judicial review.

Authority: Copyright Act, Pub. L. 94-553; 90 Stat. 2541-2602 (17 U.S.C. 101-710).

Source: 43 FR 776, Jan. 4, 1978, unless otherwise noted.

§ 204.1 Purposes and scope.

The purposes of these regulations are:

(a) The establishment of procedures by which an individual can determine if the Copyright Office maintains a system of records in which there is a record pertaining to the individual; and

(b) The establishment of procedures by which an individual may gain access to a record or information maintained on that individual and have such record or information disclosed for the purpose of review, copying, correction, or amendment.

§ 204.2 Definitions.

For purposes of this part:

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use, or disseminate;

(c) The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger [illegible] voice print or a photograph;

(d) The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 204.3 General policy.

The Copyright Office serves primarily as an office of public record. Section 705 of Title 17, United States Code, requires the Copyright Office to open for public inspection all records of copyright deposits, registrations, recordations, and other actions taken under Title 17. Therefore, a routine use of all Copyright Office systems of records created under Title 17 will be disclosure to the public. All Copyright Office systems of records will also be available for public copying as required by section 706(a), with the exception of copyright deposits, whose reproduction will be governed as authorized by section 706(b) and the regulations issued under that section.

§ 204.4 Procedure for notification of the existence of records pertaining to individuals.

(a) The Copyright Office will publish annually in the FEDERAL REGISTER notices of all Copyright Office systems of records subject to the Privacy Act. Individuals desiring to know if a Copyright Office system of records contains a record pertaining to them should submit a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the FEDERAL REGISTER. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within ten working days of receipt and will notify the requester within 30 working days of receipt of the existence or non-existence of records pertaining to the requester.

(d) Since all Copyright Office records are open to public inspection, no identity verification is necessary for individuals who wish to know whether a specific system of records pertains to them.

§ 204.5 Procedures for requesting access to records.

(a) Individuals desiring to obtain access to Copyright Office information pertaining to them should make a written request to that effect either by mail to the Supervisory Copyright Information Specialist, Information and Publications Section, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559, or in person between the hours of 9 a.m. and 4 p.m. on any working day at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va.

(b) The written request should identify clearly the system of records which is the subject of inquiry, by reference, whenever possible, to the system number and title as given in the notices of systems of records in the FEDERAL REGISTER. Both the written request and the envelope carrying it should be plainly marked "Privacy Act Request." Failure to so mark the request may delay the Office response.

(c) The Office will acknowledge all properly marked requests within ten working days of receipt; and will notify the requester within 30 working days of receipt when and where access to the record will be granted. If the individual requested a copy of the record, the copy will accompany such notification.

§ 204.6 Fees.

(a) The Copyright Office will provide, free of charge, one copy to an individual of any record pertaining to that individual contained in a Copyright Office system of records, except where the request is for a copy of a record for which a specific fee is required under section 708 of Pub. L. 94-553, in which case that fee shall be charged. For additional copies of records not covered by section 708 the fee will be computed at the rate of $.45 per page for 24 pages or less, and $.35 per page for 25 pages or more, with a minimum fee of $4.00. The Office will require prepayment of fees estimated to exceed $25.00 and will remit any excess paid or bill an additional amount according to the differences between the final fee charged and the amount prepaid. When prepayment is required, a request will not be deemed "received" until prepayment has been made.

(b) The Copyright Office may waive the fee requirement whenever it determines that such waiver would be in the public interest.

§ 204.7 Request for correction or amendment of records.

(a) Any individual may request the correction or amendment of a record pertaining to her or him. With respect to an error in a copyright registration, the procedure for correction and fee chargeable is governed by section 408(d) of Pub. L. 94-553, and the regulations issued as authorized by that section. With respect to an error in any other record, the request shall be in writing and delivered either by mail addressed to the Supervisory Copyright Information Specialist, Information and Publications Section Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559, or in person at room 101, Copyright Office, Building No. 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Va. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to an error in a copyright registration, the time limit for Office response to requests for correction is governed by section 408(d) of Pub. L. 94-553, and the regulations issued as authorized by that section. With respect to other requests for correction or amendment of records, the Office will respond within 10 working days indicating to the requester that the requested correction or amendment has been made or that it has been refused. If the requested correction or amendment is refused, the Office response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

§ 204.8 Appeal of refusal to correct or amend an individual's record.

(a) An individual has 90 calendar days from receipt of the Copyright Office's response to appeal the refusal to correct or amend a record pertaining to the individual. The individual should submit a written appeal to the Register of Copyright, Copyright Office, Library of Congress, Washington, D.C. 20559 for the final administrative determination. Appeals, and the envelopes carrying them, should be plainly marked "Privacy Act Appeal". Failure to so mark the appeal may delay the Register's response. An appeal should contain a copy of the request for amendment or correction and a copy of the record alleged to be untimely, inaccurate, incomplete or irrelevant.

(b) The Register will issue a written decision granting or denying the appeal within 30 working days after receipt of the appeal unless, after showing good cause, the Register extends the 30 day period. If the appeal is granted, the requested amendment or correction will be made promptly. If the appeal is denied, in whole or part, the Register's decision will set forth reasons for the denial. Additionally, the decision will advise the requester that he or she has the right to file with the Copyright Office a concise statement of his or her reasons for disagreeing with the refusal to amend the record and that such statement will be attached to the requester's record and included in any future disclosure of such record.

§ 204.9 Judicial Review.

Within two years of the receipt of a final adverse administrative determination, an individual may seek judicial review of that determination as provided in 5 U.S.C. 552a(g)(1).

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PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

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AUTHORITY: 17 U.S.C. 803(a).

SOURCE: 43 FR 53719, Nov. 17, 1978, unless otherwise noted.

Subpart A—Organization

§ 301.1 Purpose.

The Copyright Royalty Tribunal (Tribunal) is an independent agency in the Legislative Branch, created by Pub. L. 94-553 of October 19, 1976.

The Tribunal's statutory responsibilities are:

(a) To make determinations concerning copyright royalty rates in the areas of cable television covered by 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for phonorecords (17 U.S.C. 115) and for coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116).

(c) To establish and later make determinations concerning royalty rates and terms for non-commercial broadcasting (17 U.S.C. 118).

(d) To distribute cable television and jukebox royalties under 17 U.S.C. 111 and 17 U.S.C. 116 deposited with the Register of Copyrights.

§ 301.2 Address for information.

The official address of the Copyright Royalty Tribunal is 1111 20th Street NW., Washington, D.C. 20036, until March 31, 1979. Office hours are Monday through Friday, 8:30 a.m. to 5:30 p.m., excluding legal holidays.

§ 301.3 Composition of the Tribunal.

The Tribunal is composed of five members appointed by the President with the advice and consent of the Senate.

§ 301.4 The Chairman.

(a) On December 1st of each year the Chairman will be designated for a term of 1 year from the most senior Commissioner who has not yet previously served as Chairman, or, if all the Commissioners have served, the most senior Commissioner who has served the least number of terms will be designated Chairman.

(b) The responsibilities of the Chairman are, first, to preside at meetings and hearings of the Tribunal, and second, to represent the Tribunal officially in all external matters. In matters of legislation and legislative reports, the Chairman will represent the majority opinion of the Tribunal; however, any Commissioner with a minority or supplemental opinion may have that opinion represented also. The Chairman is the initial authority for all communications with other government officials or agencies and is the contracting officer; however, another Commissioner or subordinate official may be designated to act in his stead. The Chairman shall convene a meeting of the Tribunal upon the request of a majority of the Commissioners.

§ 301.5 Standing committee.

The Tribunal may establish standing or temporary committees to act in whatever capacity the Tribunal feels is appropriate. Said committees are authorized, in the areas of their jurisdiction, to conduct hearings, meetings, and other proceedings, but no such subdivision shall be authorized to act on behalf of the agency as a whole within the official meeting of 5 U.S.C. 552(a)(1).

§ 301.6 Administration of the Tribunal.

The administration of the Tribunal denotes chiefly the maintenance of the Tribunal records and the custodianship to Tribunal property. The records to be maintained include legal and public records, a current index of opinions, orders, policy statements, procedures, and rules of practice, and instructions that affect the public. Also, announcements of Tribunal actions must be published in the FEDERAL REGISTER as required, and the observance by the Tribunal of appropriate administrative procedure must be supervised, as well as the disposition of Tribunal correspondence. From time to time other administrative responsibilities may emerge. To manage the above, the Tribunal may choose to install an Administrative Officer; however, if not, it will be the Chairman's duty to see that these responsibilities are met.

§ 301.7 Proceedings.

(a) *Location.* The Tribunal will normally hold all proceedings at its principal office, except under exceptional circumstances, in which case the Tribunal may perform its duties anywhere in the United States. The Tribunal's proceedings will all be public, except as exempted in § 301.15.

(b) *Quorum.* A majority of the members of the Tribunal constitutes a quorum.

(c) *Voting.* Each Commissioner's vote shall be recorded separately, and the votes of the Commissioners shall be taken in order of their seniority, except that the Chairman shall vote last. No proxy votes will be recorded.

Subpart B—Public Access to Tribunal Meetings

§ 301.11 Open meetings.

(a) The purpose of this chapter is to comply with the Government in the Sunshine Act, Pub. L. 94-409; 90 Stat., 1241 et seq., 5 U.S.C. 522(b), and insure that all Tribunal meetings shall be open to the public. The conditions under which meetings, as an exception, may be closed, are listed in § 301.13

(b) Each meeting announcement by the Tribunal shall be made at least 7 calendar days in advance in the FEDERAL REGISTER and shall state the time and place of the meeting, the subject to be discussed, whether the meeting is to be open or closed, and the name and telephone number of the person to contact for further information.

(c) If amendments are made to the original announcement, they must be placed in the FEDERAL REGISTER as soon as practicable. Changes in time and place may be made simply by making such an announcement, but a change in subject matter requires a recorded vote by Commissioners, with the results of that vote appearing in the announcement of the amendment.

(d) If it is decided that a meeting must be held on shorter notice than 7 days, that decision must be made by recorded vote of Commissioners and included in the announcement.

§ 301.12 Conduct of open meetings.

(a) Meetings of the Tribunal will be conducted in a manner to insure both the public's right to observe and the ability of the Tribunal to conduct its business properly. The Chairman or presiding officer will take whatever measures he feels necessary to achieve this.

(b) The right of the public to be present does not include the right to participate or make comments.

(c) Reasonable access for news media will be provided at all public sessions provided that it does not interfere with the comfort of Commissioners, staff, or witnesses. Cameras will be admitted only on the authorization of the Chairman, and no witness may be photographed or have his testimony recorded for broadcast if he objects.

§ 301.13 Closed meetings.

In the following circumstances (as per 5 U.S.C. 552(c), 1-10) the Tribunal may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive order, in the interests of national defense or foreign policy;

(b) If the matter relates solely to the internal personnel rules and practices of the Tribunal;

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue;

(d) If the matter involves privileged or confidential trade secrets or financial information;

(e) If the result might be to accuse any person of a crime or formally censure him;

(f) If there would be a clearly unwarranted invasion of personal privacy;

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information which if written would be contained in such records, and to the extent disclosure would (1) interfere with enforcement proceedings, (2) deprive a person of the right to a fair trial or impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclosure the identify of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, confidential information furnished only by a confidential source, (5) disclosure investigative techniques and procedures, or (6) endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate the Tribunal's action, unless the Tribunal has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action.

(i) If the matter concerns the Tribunal's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing.

§ 301.14 Procedure for closing meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of the Commissioners. Each question, either to close a meeting or withhold information, must be voted on separately, unless a series of meetings is involved, in which case the Tribunal may vote to keep the discussions closed for 30 days, starting from the first meetings. If the Tribunal feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the Chairman must certify that, in his opinion, such a step is permissible, and he shall cite the appropriate exemption under § 301.13. This certification shall be included in the announcement of the meeting and be maintained as part of the Tribunal's records.

(c) Following such a vote, and by the end of the working day, the Chairman must transmit the following information to the FEDERAL REGISTER for publication:

(1) The vote of each Commissioner;

(2) The appropriate exemption under § 301.13;

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 301.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject to either a complete transcript or, in the case of § 301.13(i) and at the Tribunal's discretion, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all rollcall votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Tribunal for 2 years or 1 year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the Chairman does not feel is exempt from disclosure under § 301.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the Chairman at the end of each calendar year and if he feels they may at that time be disclosed, he will resubmit the question to the Tribunal to gain authorization for their disclosure.

§ 301.16 Requests to open or close meetings.

(a) Any person may request the Tribunal to open or close a meeting or disclose or withhold information. Such a request must be captioned "Request to Open" or "Close" a meeting on a specific date concerning a specific subject. The requester must state his or her reasons, and include name and address, and desirably, telephone number.

(b) In the case of a request to open a meeting the Tribunal has previously voted closed, the Tribunal must receive the request within 3 working days of the meeting's announcement. If not, it will not be heeded, and the requester will be so notified. Requests are desired in seven copies.

(c) For the Tribunal to act on a request to open or close a meeting, the question must be brought to a vote before the Tribunal by one of the Commissioners. If the request is granted, an amended meeting announcement will be issued immediately and the requester notified. If a vote is not taken, or if after a vote the request is denied, the requester will also be notified promptly.

§ 301.17 Ex parte communication.

(a) No person not employed by the Tribunal and no employee of the Tribunal who performs any investigative function in connection with a Trubunal proceeding shall communicate, directly or indirectly, with any member of the Tribunal or with any employee involved in the decisions of the proceeding, with respect to the merits of any proceeding before the Tribunal or of a factually related proceeding.

(b) No member of the Tribunal and no employee involved in the decision of a proceeding shall communicate, directly or indirectly, with any person not employed by the Tribunal or with any employee of the Tribunal who performs an investigative function in connection with the proceeding, with respect to the merit of any proceeding before the Tribnal or of a factually related proceeding.

(c) If an *ex parte* communication is made to or by any member of the Tribunal or employee involved in the decision of the proceeding, in violation of paragraph (a) or (b) of this section, such member or employee shall promptly inform the Tribunal of the substance of such communciation and of the circumstance surrounding it. The Tribunal shall then take such action it considers appropriate; provided that any written *ex parte* communication and a summary of any oral *ex parte* communication shall be made part of the public records of the Tribunal, but shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(d) A request for information with respect to the status of proceeding shall not be considered an *ex parte* communication prohibited by this section.

Subpart C—Public Access To and Inspection of Records

The following is the manner in which Tribunal opinions, recommended decisions, orders, public reports and records shall be made available to the public.

§ 301.21 Public records.

(a) Final official determinations of the Tribunal will be published in the FEDERAL REGISTER and include the relevant facts and the reasons for those determinations.

(b) An annual report, required of the Tribunal to be presented to the President and Congress each fiscal year, along with a detailed fiscal statement of account, will be available both for inspection at the Tribunal and for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) All other Tribunal records are available, for inspection or copying at the Tribunal, except:

(1) Records that relate solely to the internal personnel rules and practices of the Tribunal;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with the Tribunal;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among Commissioners concerning the drafting of decisions, opinions, reports, and findings on any Tribunal matter or proceeding;

(6) Offers of settlement which have not been accepted unless they have been made public by the offerer;

(7) Records not herein listed but which may be withheld as "exempted" if the Tribunal finds compelling reasons exist.

§ 301.22 Public access.

(a) Information may be requested from the Tribunal in person, by telephone, or by mail.

(b) If the material sought is not a Tribunal record, is exempted, or for some reason is unavailable, the person requesting it will be so informed and, in the case of an "exempted record," will be explained the reason for the exemption and the procedure for appeal under the Freedom of Information Act, § 301.13.

(c) Fees for copies of Tribunal records are: $.15 per page; $10 for each hour or fraction thereof spent searching for records; $4 for certification of each document; and the actual cost to the Tribunal for any other costs incurred.

[43 FR 53719, Nov. 11, 1978, as amended at 44 FR 53161, Sept. 13, 1979]

301.23 Freedom of Information Act.

(a) If a request is made under the Freedom of Information Act (5 U.S.C. 552), it must be in writing, be captioned "Freedom of Information Act Request," and identify as accurately as possible, the information desired.

(b) Within 10 working days after the Tribunal has received such a request, the Chairman shall inform the requester how the records may be inspected or copied and the cost (as under § 301.22) of copying. The chairman may, however, extend this time limit up to 10 working days if:

(1) Records must be located or transferred;

(2) Voluminous material must be examined;

(3) Other agencies with substantial interest in the matter must be consulted or other elements of the Tribunal must be consulted.

In this case the requester shall be notified in accordance with 5 U.S.C. 552 (a)(6)(B).

(c) If the request is denied, the Chairman shall so inform the requester in writing, citing the exemption authorizing the denial and informing the requester that he or she may appeal the denial to the Tribunal within 20 working days. Appeals must be in writing and must be acted on by the Tribunal within 20 working days of their receipt. If the appeal is rejected, the requester must be so notified immediately and informed of the provisions for judicial review under 5 U.S.C. 552(a)(4).

§ 301.21 Privacy Act.

(a) The Privacy Act of 1974 (Pub. L. 93-579) 5 U.S.C. 552(a), concerns only requests which contain personal information retrievable by a personal identified. This section does not apply to personnel records located in Government-wide systems elsewhere.

The purpose of the Privacy Act is to enable individuals to:

(1) Learn if the Tribunal maintains records concerning them;

(2) Have access to such records;

(3) Learn if and to whom the Tribunal has disclosed such records; and

(4) Amend such records.

The Tribunal, in compliance with paragraph (a)(4) of this section, will record the disclosures of all records, their dates, the material disclosed, and to whom the material has been disclosed.

(b) A request made under the Privacy Act must be in writing, captioned "Privacy Act Request," and identify as accurately as possible the records in question and the nature of the information desired. This section is not to be construed as allowing an individual access to information compiled in reasonable anticipation of a civil action or proceeding.

(c) The request must be signed by the person making it, and such signature will be considered certification that the person signing is either the individual involved or that person's guardian. If the Chairman considers it necessary, he may require additional verification. Section 552(a)(i)(3) of the Privacy Act; 5 U.S.C. 552(a)(i)(3), states the penalties for false representation.

(d) If a medical record is involved and the chairman feels that its disclosure might adversely affect the individual, he shall require that person to designate a medical doctor to whom the record will be transmitted.

(e) Within 10 working days after the Tribunal has received such a request, the Chairman shall acknowledge its receipt to the requester and within 30 days shall inform the requester how the records may be inspected and the cost for copying, unless the records are exempted under § 301.21(c).

(f) If an individual who has obtained access to personal records wishes to have those records amended, he or she must make such a request in writing, state the nature of the information desired amended, and cite the reasons. Within 10 working days after the Tribunal has received such a request, the Chairman shall acknowledge its receipt and inform the requester whether or not the request has been granted. If the request is denied, the Chairman shall explain why and inform the requester of the right to appeal the denial to the Tribunal. All appeals must be in writing, with the caption "Privacy Act Appeal," and the Chairman will inform the requester of their disposition within 30 working days, unless there is good cause for the time to be extended. If the appeal is denied the requester will be notified of the provision for judicial review under 5 U.S.C. 552(b).

(g) Exempt from this section is all investigatory material compiled for law enforcement purposes as stipulated in 5 U.S.C. 552(k)(2).

Subpart D—Equal Employment Opportunity

§ 301.31 Purpose.

(a) This section sets forth the Tribunal's policy concerning Equal Employment Opportunity and the complaint procedures in the case of discrimination.

(b) The policy of the Tribunal is to oppose discrimination in all areas of job application, employment, and promotion on the basis of race, religion, sex, national origin, age, or physical handicap; this is because such a policy is right and any other would be morally indefensible. This policy will be pursued actively and affirmatively.

§ 301.32 Recruitment and hiring.

(a) Except in the case of the personal staffs of Commissioners, responsibility for equal employment opportunity is the Tribunal's as a whole; however, the authority to execute this policy may be delegated to a Personnel Committee.

(b) All hiring will be done on the basis of individual qualifications, without discrimination. The criteria of who is best qualified to fill a vacancy rests with the Tribunal, but there will be no criteria which discriminates in the areas covered by § 301.31(b).

(c) In soliciting job applicants, systematic efforts will be made to locate and encourage qualified minority and women candidates. Where appropriate, the positions will be advertised in publications with primarily minority and women readership and announced through organizations or groups with high minority and women representation.

(d) Applicants for the same position will be required to have the same skills and to provide the same background information. The total number of applicants considered must reflect the proportion of minorities and women reasonably available for such a position. The criteria by which applicants are screened and selected shall be job related.

§ 301.33 Complaint procedures.

(a) Any person who believes that he or she has been discriminated against on the basis of race, religion, sex, national origin, age, or physical handicap, must first resolve such a complaint through the following procedure before taking civil action. Before a complaint may be presented formally the procedures for resolving it informally must be exhausted.

(1) *Informal complaint procedures.* (i) Within 30 days of an alleged discriminatory act, or in the case of a personnel action, within 30 days of its effective date, the complainant must contact the Chairman of the Personnel Committee and explain the case for the complaint. In case the complaint is against the Chairman of the Personnel Committee, it will be made to the chairman of the Tribunal. The complainant may be accompanied or represented by any person of his or her choosing.

(ii) The chairman of the Personnel Committee, or the Chairman of the Tribunal, or a Commissioner designated by the Chairman, shall then make whatever inquiry seems necessary into the circumstances surrounding the complaint and shall attempt to resolve it informally through counseling. Such counseling shall be completed within twenty-one (21) days of the date on which the complaint was first brought, and written record will be kept. If an informal resolution is reached, its terms will be in writing. The identity of the complainant at this stage, however, will at no time be revealed unless he or she specifically authorizes it.

(iii) If an informal resolution is not reached, the complainant will be advised that he or she may then file a formal complaint.

(2) *Formal complaint procedure.* (i) Within 15 days of the final counseling session under the informal procedure above, and if no resolution has been reached, the complainant may file a formal written complaint addressed to the Chairman of the Tribunal, signed by the complainant, and specifying all the details surrounding the complaint.

(ii) On receipt of the complaint, the Chairman shall request an investigation by the Chairman of the Personnel Committee and two Commissioners not on the Committee. This investigation will review thoroughly all the circumstances surrounding the alleged discrimination and analyze the treatment of the complainant as compared with others in the same situation. The results shall be in writing and a copy sent to the complainant. The complainant shall then be given the opportunity to meet with the Commissioners who prepared this report to try to reach an adjustment of the complaint. The complainant may be accompanied or represented by a person of his or her own choosing. If the complainant is an employee of the Tribunal, he or she shall be allowed sufficient official time to present the complaint. If the complainant has designated another Tribunal employee to advise or represent him, that person shall be allowed sufficient official time to perform the appropriate duties.

(iii) If an adjustment is reached at this point, it must be signed by the complainant and shall serve to terminate the matter. If an adjustment is not reached, the investigative report will be transmitted to the Chairman of the Tribunal, and the Tribunal shall make a disposition of the complaint to take affect within 15 days. This disposition will be relayed to the complainant in writing immediately. The complainant shall also be advised of his or her right to file a civil action, or in the case of an employee of the Tribunal to demand a hearing.

(iv) Within 15 days of the announcement of the Tribunal's proposed disposition, a complainant who is an employee of the Tribunal may request a hearing. Upon receipt of such a request, the Chairman shall request from another Federal agency, a qualified Hearing Examiner who has been certified to hear Equal Employment Opportunity complaints.

(v) The Hearing Examiner, within 21 days, shall conduct a hearing. Witnesses will be allowed to testify, but their testimony must relate only to the complaint; information will be admitted into evidence, but only information having a direct bearing on the complaint. Both parties to the complaint shall have the opportunity to cross-examine. The hearing shall be recorded, and the transcript as well as the findings and recommendations of the Hearing Examiner shall be transmitted to the Tribunal for a final decision.

(vi) The Tribunal will give special consideration to the recommendations of the Hearing Examiner, and if he wishes to reject or modify those recommendations, the Tribunal must accompany such a decision with a letter detailing his reasons. The Tribunal's final decision will be accompanied by a copy of the Hearing Examiner's findings and recommendations and a transcript of the hearing.

(vii) After the decision has been issued, the complainant shall be advised immediately that he or she has the right to file a civil action in the appropriate District Court within 30 days.

(viii) If within one hundred eighty (180) days from the date the complainant first brought the complaint, the Tribunal has failed to issue a decision, the complainant will also have the right to file a civil action.

(ix) Where discrimination is found, the Tribunal shall review the matter which gave rise to the complaint and determine whether or not disciplinary action is necessary. The basis for this action shall be in writing, but not included in the complaint file.

§ 301.34 Third party allegation of discrimination.

Organizations or third parties may bring allegations of discrimination against the Tribunal in areas unrelated to individual complaints, but such allegations must be in writing, and in sufficient detail for the Tribunal to investigate them. The Tribunal may order an investigation, and the party bringing the allegations will be informed of its results as well as of any decision by the Tribunal and corrective action.

§ 301.35 Business relations.

Business contracts entered into by the Tribunal shall stipulate that all contractors, subcontractors, and suppliers to the Tribunal conform in their own policies with the substance of the Tribunal's Equal Employment Opportunity Policy.

Subpart E—Procedures and Regulations

§ 301.40 Scope.

All Tribunal proceedings will be governed by the procedures of this subpart. This subpart does not apply to general statements of policy or to rules of agency organization, procedure, or practice.

§ 301.41 Formal hearings.

(a) The formal hearings which will be conducted pursuant to the rules of this subpart are rate adjustment proceedings, royalty fee distribution proceedings, and all rulemaking proceeding in which it has been determined to conduct a hearing. The Tribunal may also, on its own motion or on the petition of an interested party, hold other proceedings it deems necessary on any matter it has the authority to investigate, in order to obtain information in determining its policies, in exercising its duties, or in formulating or amending its rules and regulations. Such proceedings also will be subject to the rules of this subpart.

(b) Studies or conferences the Tribunal may hold in carrying out its statutory responsibilities may be conducted in whole or in part under the provisions of this subpart, depending upon the discretion of the Tribunal.

§ 301.42 Suspension, amendment, or waiver of rules.

(a) The provisions of this subpart may be suspended, revoked, amended, or waived, in whole or in part, at any time by the Tribunal for good cause shown, subject to the provisions of the Administrative Procedure Act. Where procedures have not been specifically prescribed in this subpart, the Tribunal shall follow those which in its opinion will best serve the purposes of a proceeding.

§ 301.43 Notice of proposed rulemaking.

(a) *General notice.* Public notice for rate adjustment and royalty distribution proceedings is covered in Subparts F and G of this part. Before the adoption of any rule of general applicability, or the commencement of any hearing on any proposed rulemaking, the Tribunal shall publish a general notice in the FEDERAL REGISTER, such notice to be published not less than 30 days prior to the date on which the proposed rules may be considered by the Tribunal, or the date of any hearing on such proposed rules. However, where the Tribunal, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may adopt the rules without notice by incorporating a finding to such effect and a concise statement of the reasons therefor in the notice.

(b) *Notice.* A rule proceeding shall commence with a notice of proposed rulemaking. Such notice shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The notice shall include: (1) The terms or substance of the proposed rule or a description of the subjects and issues involved; (2) reference to the legal authority under which the rule is proposed; (3) a statement describing the particular reason for the rule; and (4) an invitation to all interested persons to comment.

(c) *Hearing notice.* A hearing notice of proposed rulemaking shall be published in the FEDERAL REGISTER, and to the extent practicable, otherwise made available to interested persons. The hearing notice shall include: (1) Designated issues which are to be considered; (2) the time and place of hearing, and (3) instructions to interested persons seeking to make oral presentation.

§ 301.44 Conduct of proceedings.

(a) At the opening of the proceeding the Chairman shall announce the subject under consideration.

(b) Only Commissioners of the Tribunal, authorized Tribunal staff, or counsel as provided in this chapter shall question witnesses.

(c) Subject to the approval of the Tribunal, the Chairman will have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Ruling on objections and motions;

(3) Administering oaths and affirmations to all witnesses;

(4) Making all rulings with respect to introducing or excluding documentary or other evidence;

(5) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring

that the proceedings are fair and impartial;

(6) Announcing the schedule of subsequent hearing;

(7) Taking any other action which is consistent with this chapter and which has been authorized by the Tribunal.

(d) With all due regard for the convenience of witnesses, proceedings shall be conducted as expeditiously as possible.

(e) Following the opening statement, the Tribunal may convene first in executive session if such is the requirement of a statute or rule.

§ 301.15 Declaratory rulings.

In accordance with 5 U.S.C., Sec. 554(e), the Tribunal may on motion of its own, or on motion of an interested party, issue a declaratory ruling in order to terminate a controversy or remove uncertainty.

§ 301.16 Testimony under oath or affirmation.

All witnesses at Tribunal proceedings shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

§ 301.17 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings will be designated by the Tribunal from time to time. Anyone wishing to inspect the transcript of any hearing may do so at the Tribunal; however, anyone wishing a copy must purchase it from the official reporter.

(b) After the close of the hearing, the complete transcript of testimony together with all exhibits shall be certified as to identity by the Chairman and filed in the offices of the Tribunal.

(c) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the exclusive record or decision. Any decision resting on official notice of a material fact not appearing in the record shall automatically afford any party, on timely request, to have an opportunity to show the contrary.

§ 301.18 Closing the hearing.

To close the record of hearing, the Chairman shall make an announcement that the taking of testimony has concluded. In its discretion the Tribunal may close the record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted: *Provided*, That the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been recessed may not be closed by the Chairman prior to the day on which the hearing is to resume, except upon 10 days' notice to all parties.

§ 301.19 Documents.

(a) *Copies of documents.* The original and 15 copies of every document filed and served in proceedings before the Tribunal shall be furnished for the Tribunal's use, except exhibits made a part of the record.

(b) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel, shall be signed by at least one attorney of record and list his address and telephone number. All copies shall be confirmed. Except when otherwise specifically provided, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification by him that he has read the document, that to the best of his knowledge and belief there is good ground to support it, and that it has not been interposed for delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with intent to defeat the purpose of this section, may be stricken as sham and false and the matter proceed as though the document had not been filed.

§ 301.50 Reopening of proceedings, modification or setting.

(a) *Condition for reopening.* (1) Except in the case of rate adjustment proceedings and distribution proceedings the Tribunal may, upon petition or its own motion, reopen any proceeding, after reasonable notice, for the purpose of rehearing arguments or reconsideration.

(2) After granting an opportunity to be heard, the Tribunal may alter, modify or set aside in whole or in part, the report of its finding or order if it finds such action required by changed conditions, by material mistake of fact or law, or by the public interest

(b) *Petition for reopening.* A petition for reopening shall be made in writing and shall state its grounds. If it is a petition to take further evidence, the nature and purpose of the new evidence to be adduced shall be stated briefly, and an explanation given for why such evidence was not available at the time of the prior hearing. If it is a petition for reargument or reconsideration, the matter that is claimed to have been erroneously decided shall be specified and the alleged errors outlined briefly. Copies of the petition shall be furnished to all participants or their counsel.

(c) *Stay of rule or order.* No petition for reopening nor permission for reopening shall constitute a stay of any Tribunal rule or order; except that the Tribunal may postpone the effective date of any action taken by it pending judicial review and if, in the Tribunal's opinion, justice so requires.

§ 301.51 Rules of evidence.

(a) *Admissibility.* In any public hearing before the Tribunal, evidence which is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence which is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. A document in which material and relevant matter occurs which is of such bulk that it would unnecessarily encumber the record, may instead be marked for identification, and the relevant and material parts, once properly authenticated, may be read into the record. If the Tribunal desires, a true copy of the material and relevant matter may be presented in extract and submitted as evidence. Anyone presenting documents as evidence must present copies of all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer any other portion in evidence which may be felt material and relevant.

(c) *Documents filed with the Tribunal.* If the matter offered in evidence is contained in documents already on file with the Tribunal, the documents themselves need not be produced, but may instead be referred to according to how they have been filed with the Tribunal.

(d) *Public documents.* If a public document is offered in evidence either in whole or in part, such as an official report, decision, opinion or published scientific or economic data, and the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Copies to participants.* Copies of all prepared testimony and exhibits must be distributed to the Tribunal and to other participants or their counsel at a hearing, unless the Chairman directs otherwise. For its use the number of copies the Tribunal requires is seven.

(f) *Reception and ruling.* Any ruling on the admissibility of evidence will be made by the Chairman, and he shall control the reception of evidence and insure that it confines itself to the issues of the proceeding.

(g) *Offers of proof.* If the Chairman rejects or excludes proposed oral testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(h) *Introduction of studies and analysis.* If studies or analysis are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Tribunal.

(i) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be added in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies, if requested, which employ alternative models and variables.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data itself.

(j) *Cumulative evidence.* Cumulative evidence will be discouraged by the Tribunal and the Tribunal may limit the number of witnesses that may be heard in behalf of any one party on any one issue.

(k) *Further evidence.* At any state of a hearing the Chairman may call upon any party to furnish further evidence upon any issue.

(l) *Rights of parties as to presentation of evidence.* Every participant shall have the right to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be necessary to disclose the facts fully and truthfully. The Chairman, however, may limit introduction of evidence, examination, and cross-examination if in his judgment this evidence or examination would be cumulative or cause undue delay.

§ 301.52 Participation in any proceeding.

Interested persons will be afforded an opportunity to participate in any proceeding and submit written data, views, or arguments, with or without the opportunity to present the same orally. If proposed rules are required by statute to be made on the record after opportunity for a hearing, such a hearing shall be conducted pursuant to 5 U.S.C., Subchapter II, and 7 U.S.C., and the procedure will be the same as in § 301.55 herein.

§ 301.53 Examination, cross-examination, and rebuttal.

(a) Each Commissioner may examine any witness at any time.

(b) Examination, cross-examination, and rebuttals relevant to the issues under consideration, shall be allowed by the Chairman, but only to the extent they are necessary for a full and true disclosure of the facts.

(c) *Selection of representatives for cross-examination.* The Tribunal will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, then each individual or group will be allowed to conduct his own examination and cross-examination, but only on issues affecting his particular interest.

§ 301.54 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the Chairman so to file, such filings to take place within 20 days after the record has been closed, unless additional time is granted.

(b) Failure to file when directed to so do may be considered a waiver of the right to participate further in the proceeding, unless good cause is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions and cite appropriately the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues which specifically affect that person.

(d) Proof of service upon all other counsel or parties in a proceeding must accompany pleadings and all other papers filed under this section.

§ 301.55 Promulgation of rules or orders.

(a) In adopting a rule or order the Tribunal will consider all relevant matters of fact, law, and policy, and all relevant matters which have been presented by interested persons, and will exercise due discretion. Together with a concise general statement of its basis and purpose and any necessary findings, the rule or order will be published in the FEDERAL REGISTER, and if any other public notice is necessary that will be made also.

(b) The effective date of any rule, or its amendment, suspension, or repeal, will be at least 30 days after it is published in the FEDERAL REGISTER, unless good cause has been shown and is published with the rule.

§ 301.56 Public suggestions and comments.

(a) The Tribunal encourages the public, not just those persons subject to its regulations, to submit suggestions and proposals concerning any substantial question before it, when that question will have subtantial impact either upon those directly regulated by the Tribunal or upon others. It is in the best interests of both the Tribunal and the public at large that the Tribunal be advised on issues and problems that are potentially significant to it. This will permit the Tribunal to consider policy questions and administrative reforms early enough so that they may be viewed in a general context and not in the detailed application of a particular proceeding.

(b) Upon receiving such suggestions or proposals, the Tribunal shall review them and take whatever action seems necessary. Further information may be requested from the party submitting the suggestion or proposals, and the Tribunal staff may be asked to make a study, or an informal public conference may be held. Conferences or procedures undertaken pursuant to this section shall not be deemed subject to the Administrative Procedure Act with respect to notice of rulemaking. They are intended by the Tribunal simply as a means of determining the need for Tribunal action, prior to issuing a notice of proposed rulemaking.

(c) Such suggestions or proposals, however, shall be filed in accordance with the Tribunal's rules.

(d) This policy may not be used to advocate ex parte a position in a pending proceeding. Suggestions or proposals offered must relate to general conditions, such as conditions in industry, the public interest, or the policies of the Tribunal.

Subpart F—Rate Adjustment Proceedings

§ 301.60 Scope.

This chapter governs only those proceedings dealing with royalty rate adjustments affecting cable television (17 U.S.C. 111), the production of phonorecords (17 U.S.C. 115), coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), and non-commercial broadcasting (17 U.S.C. 118). It does not govern unrelated rulemaking proceedings. Those provisions of Subpart E generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 301.61 Commencement of adjustment proceedings.

(a) In the case of cable television, phonorecords, and coin-operated phonorecord players (jukeboxes) rate adjustment proceedings will commence by the publication of a notice to that effect in the FEDERAL REGISTER on January 1, 1980, pursuant to 17 U.S.C. 804(a)(1). In the case of non-commercial broadcasting the notice will be published on June 30, 1982 and at 5-year intervals thereafter, pursuant 10 U.S.C. 118(c). The notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

(b) Initially, as outlined in paragraph (a) of this section a petition from an interested party is not necessary to commence proceedings. Thereafter, however, for rate adjustment proceedings to commerce, a petition must be filed by an interested party according to the following schedule:

(1) Cable Television: During 1985 and each subsequent fifth calendar year.

(2) Phonorecords: During 1987 and each subsequent 10th calendar year.

(3) Coin-operated phonorecord players (jukeboxes): During 1990 and each subsequent 10th calendar year.

(c) Cable television rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C., 801(b)(2) (B) and (C), if the Federal Communications Commission amends certain of its rules concerning the carriage by cable of broadcast signals, or with respect to syndicated and sports program exclusivity.

(d) In the case of non-commercial broadcasting, a petition is not necessary for the commencement of proceedings. They commence automatically according to paragraph (a) of this section.

§ 301.62 Content of petition.

(a) The petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Tribunal to determine whether the petitioner has "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users, and owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment as the result of a Federal Communications Commission rule change, the petition shall also set forth the action of the Federal Communications Commission which the party filing the petition feels authorizes a rate adjustment proceeding.

§ 301.63 Consideration of petition.

The Tribunal shall not start to consider any petition before the expiration of 90 days from the start of the calendar year specified in § 301.61(b) or 90 days from the effective date of the Federal Communications Commission action mentioned in § 301.62(c). Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest", and the Tribunal may permit written comments or a hearing on pending petitions.

§ 301.64 Disposition of petition.

At the end of the 90-day period, the Tribunal shall determine as expeditiously as possible if one or more petitioner's interest is "significant"; and shall publish in the FEDERAL REGISTER a notice of its determination and the reasons therefor, together with a notice of the commencement of proceedings if it has been determined to commence a proceeding. Any commencement notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

§ 301.65 Rate adjustment proceedings.

In any rate adjustment proceeding, all interested persons shall have the opportunity to present written comments and oral testimony, subject to the general provisions of Subpart E.

§ 301.66 Publication of proposed rate determination.

(a) Following the conclusion of the hearings, the Tribunal shall publish as soon as possible in the FEDERAL REGISTER, a notice of its proposed findings and conclusions in the rate adjustment proceeding. The Tribunal shall afford all parties a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

(b) A proposed determination will not be published if, in the Tribunal's judgment, a final determination cannot feasibly be rendered before the year's end as required by 17 U.S.C. 118(c) and 17 U.S.C. 804(e) concerning the termination of proceedings.

§ 301.67 Final determination.

Upon the conclusion of the procedures for proposed determinations described in § 301.66, or upon the conclusion of the rate adjustment proceedings provided in § 301.65, if the publication of a proposed rate determination is not feasible because of the requirements to reach a final determination before the end of the year (17 U.S.C. 118(c) and 17 U.S.C. 804(e)), the Tribunal shall publish in the FEDERAL REGISTER a written opinion stating in detail the criteria it found applicable, the facts found relevant, and the specific reasons for its determination.

§ 301.68 Reopening of proceedings.

Following the publication of a final determination in the FEDERAL REGISTER the Tribunal shall not reopen or conduct any further proceedings.

§ 301.69 Effective date of final determination.

A final determination by the Tribunal shall become effective thirty days following its publication in the FEDERAL REGISTER, unless an appeal has been filed prior to that time pursuant to 17 U.S.C. 810 to vacate, modify or correct a determination, and notice of the appeal has been served on all parties who appeared in the proceeding.

Subpart G—Royalty Fees Distribution Proceedings

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television and coin-operated phonorecord player (jukebox) royalties desposited with the Register of Copyrights, according to the terms of 17 U.S.C., 111(d)(5) and 116(c). It does not govern unrelated rulemaking proceedings. Those provisions of Subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 301.71 Commencement proceedings.

(a) *Cable television.* In the case of compulsory royalty fees for secondary transmissions by cable television, any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of July each year in accordance with Tribunal regulations.

(b) *Coin-operated phonorecord players.* In the case of compulsory royalty fees for the use of nondramatic musical works by coin-operated phonorecord players (jukeboxes) any person claiming to be entitled to such fees must file a claim with the Tribunal during the month of January each year in accordance with Tribunal regulations.

§ 301.72 Determination of controversy.

(a) *Cable television.* After the first day of August each year, the Tribunal shall determine whether a controversy exists among the claimants of cable television compulsory royalty fees. In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the FEDERAL REGISTER. If the Tribunal decides that a controversy exists, the FEDERAL REGISTER notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

(b) *Coin-operated phonorecord players.* After the first day of October each year, the Tribunal shall determine whether a controversy exists among the claimants of coin-operated phonorecord player (jukebox) compulsory royalty fees. In order to determine whether a controversy exists the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the FEDERAL REGISTER. If the Tribunal decides that a controversy exists, the FEDERAL REGISTER notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

§ 301.73 Royalty distribution proceedings.

In any royalty distribution proceeding all interested claimants shall have the opportunity to present written comments and oral testimony, subject to the general provisions of Subpart E.

§ 301.74 Publication of proposed royalty distribution determination.

(a) Following the conclusion of the hearings, the Tribunal shall publish, as soon as possible, in the FEDERAL REGISTER, a notice of its proposed findings and conclusions in the royalty distribution proceeding. The Tribunal shall afford all claimants a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

(b) A proposed determination will not be published if, in the Tribunal's judgment, a final determination cannot feasibly be rendered before the year's end, as required by 17 U.S.C. 804(e) concerning the termination of proceedings.

§ 301.75 Final determination.

Upon the conclusion of the procedures for proposed determination described in § 301.74, or upon the conclusion of the royalty distribution proceedings provided in § 301.73, if the publication of a proposed royalty distribution determination is not feasible because of the requirements to reach a final determination before the end of the year (17 U.S.C. 804(e)), the Tribunal shall publish in the FEDERAL REGISTER a written opinion stating in detail the criteria it found applicable, the facts found relevant, and the specific reasons for its determination.

§ 301.76 Reopening of proceedings.

Following the publication of a final determination in the FEDERAL REGISTER, the Tribunal shall not reopen or conduct any further proceedings.

§ 301.77 Effective date of final determination.

A final determination by the Tribunal shall become effective thirty days following its publication in the FEDERAL REGISTER, unless an appeal has been filed prior to that time pursuant to 17 U.S.C. 810 to vacate, modify, or correct a determination, and notice of the appeal has been served on all parties who appeared in the proceeding.

PART 302—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.
302.1 General.
302.2 Filing of claims to cable royalty fees for secondary transmissions during the period January 1 through June 30, 1979.
302.3 Content of claims.
302.4 Forms.
302.6 Filing of claims to cable royalty fees for secondary transmissions during the period July 1 through December 31, 1978.

Sec.
302.7 Filing of claims to cable royalty fees for secondary transmissions during calendar year 1979 and subsequent calendar years.
302.8 Compliance with statutory dates.
302.9 Proof of fixation of works.
302.10 Deduction of costs of distribution proceedings.

AUTHORITY: 17 U.S.C. 111(d)(5)(A).

SOURCE: 43 FR 24528, June 6, 1978, unless otherwise noted.

§ 302.1 General.

This regulation prescribes procedures pursuant to 17 U.S.C. 111(d)(5)(A), whereby persons claiming to be entitled to compulsory license fees for secondary transmissions by cable systems shall file claims with the Copyright Royalty Tribunal (CRT).

§ 302.2 Filing of claims to cable royalty fees for secondary transmissions during the period January 1 through June 30, 1979.

Every person claiming to be entitled to compulsory license fees for secondary transmissions by cable systems during the period January 1 through June 30, 1978, shall file in the office of the Copyright Royalty Tribunal a claim to such fee during the calendar month of July 1978 or July 1979. Any claimant so filing shall be considered as having filed a claim for the period January 1 through June 30, 1978. For purposes of this clause claimants may file claims jointly or as a single claim. A joint claim shall include a concise statement of the authorizations for the filing of the joint claim.

[44 FR 60727, Oct. 22, 1979]

§ 302.3 Content of claims.

The claims filed pursuant to § 302.2 shall include the following information:

(a) The full legal name of the person or entity claiming compulsory license fees.

(b) The full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(c) A general statement of the nature of the copyrighted works, whose secondary transmission provides the basis of the claim.

(d) Identification of at least one secondary transmission establishing a basis for the claim.

§ 302.4 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

§ 302.6 Filing of claims to cable royalty fees for secondary transmissions during the period July 1 through December 31, 1978.

(a) During the month of July 1979, every person claiming to be entitled to compulsory license fees for secondary transmissions during the period July 1 through December 31, 1978, shall file in the offices of the Copyright Royalty Tribunal a claim to such fees. Any claimant so filing shall be considered as having filed a claim for the period July 1 through December 31, 1978.

(b) Every person who filed in the office of the Copyright Royalty Tribunal during the calendar month of July, 1979, claiming to be entitled to compulsory license fees for secondary transmissions by cable systems during the period July 1 through December 31, 1978, but who did not file a claim for the period January 1 through June 30, 1978, shall be considered as having filed a claim for the period of January 1 through June 30, 1978.

(c) For the purpose of this clause claimants may file claims jointly or as a single claim.

[44 FR 60727, Oct. 22, 1979]

§ 302.7 Filing of claims to cable royalty fees for secondary transmissions during calendar year 1979 and subsequent calendar years.

(a) During the month of July 1980 and in July of each succeeding year, every person claiming to be entitled to compulsory license fees for secondary transmissions during the preceding calendar year shall file a claim to such fees in the office of the Copyright Royalty Tribunal. No royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July. For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require. A joint claim shall include a concise statement of the authorization for the filing of the joint claim.

(b) Claims filed during the month of July 1980 shall include the following information:

(1) The full legal name of the person or entity claiming compulsory license fees.

(2) The full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) A general statement of the nature of the copyrighted works, whose secondary transmission provides the basis of the claim.

(4) Identification of at least one secondary transmission establishing a basis for the claim.

[45 FR 26959, Apr. 22, 1980]

§ 302.8 Compliance with statutory dates.

For purposes of 17 U.S.C. (d)(5)(A), claims required to be filed with the Copyright Royalty Tribunal during the month of July shall be considered as timely filed if: (a) They are addressed to the Copyright Royalty Tribunal, 1111 20th Street NW., Washington, D.C. 20036, and deposited with the U.S. Postal Service with sufficient postage as first class mail prior to the expiration of the statutory period, and (b) they are accompanied by a certificate stating the date of deposit. The persons signing the certificate should have reasonable basis to expect that the correspondence would be mailed on or before the date indicated.

§ 302.9 Proof of fixation of works.

The Copyright Royalty Tribunal shall not require in any proceeding for the distribution of cable royalty fees the filing by claimants of tangible fixations of works in whole or in part. In the event of a controversy concerning the actual fixation of a work in a tangible medium as required by the Copyright Act, the Copyright Royalty Tribunal shall resolve such controversy for purposes of the distribution proceeding solely on the basis of affidavits by appropriate operational personnel and other appropriate documentary evidence, and such oral testimony as the Copyright Royalty Tribunal may deem necessary. Affidavits submitted by claimants should establish that the work for which the claim is submitted was fixed in its entirety, and should state the nature of the work, the title of the program, the duration of the program, and the date of fixation. No such affidavits need be filed with the Copyright Royalty Tribunal unless requested by the Tribunal.

[43 FR 40225, Sept. 11, 1978]

§ 302.10 Deduction of costs of distribution proceedings.

In compliance with 17 U.S.C. 111(d)(5)(c) and 17 U.S.C. 807, before any distributions are made pursuant to 17 U.S.C. 111, the Copyright Royalty Tribunal will deduct all costs which would not have been incurred by the Tribunal but for the distribution proceeding.

[44 FR 29894, May 23, 1979]

PART 303—ACCESS TO PHONORECORD PLAYERS (JUKEBOXES)

Sec.
303.1 General.
303.2 Access to establishments and phonorecord players.

§ 303.1 General.

This regulation prescribes the procedures pursuant to 17 U.S.C. 116 by which persons who can reasonably be expected to have claims to royalty fees paid by the operators of coin-operated phonorecord players under the compulsory license established by 17 U.S.C. 116 may have access to the establishments in which such phonorecord players are located and to the phonorecord players located therein to obtain information which may be reasonably necessary to determine the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. The terms "operator" and "coin-operated phonorecord player" have the meanings given to them by paragraph (3) of section 116 of Title 17.

(17 U.S.C. 116(c)(5); 17 U.S.C. 801(b))

[43 FR 40500, Sept. 12, 1978]

§ 303.2 Access to establishments and phonorecord players.

A person, or authorized representatives of such person, who can reasonably be expected to have claims to royalty fees paid by the operators of phonorecord players shall have access to the establishments in which such phonorecord players are located during customary business hours on regular business days. Such access shall be only for the purpose of obtaining information concerning the performance of musical works by the phonorecord players. The right of access shall be exercised in such a manner as not to cause any significant interference with the normal functioning of an establishment.

(17 U.S.C. 116(c)(5); 17 U.S.C. 801(b))

[43 FR 40500, Sept. 12, 1978]

PART 304—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING

Sec.

304.1 General.
304.2 Definition of public broadcasting entity.
304.3 Performance of ASCAP musical compositions by PBS and NPR and their stations.
304.4 Performance of other musical compositions by PBS and NPR and their stations.
304.5 Performance of musical compositions by public broadcasting entities licensed to colleges or universities.
304.6 Performance of musical compositions by other public broadcasting entities.
304.7 Recording rights, rates, and terms.
304.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.
304.9 Unknown copyright owners.
304.10 Cost of living adjustment.
304.11 Notice of restrictions on use of reproductions of transmission programs.
304.12 Amendment of certain regulations.
304.13 Issuance of interpretative regulations.
304.14 Report to Congress.

AUTHORITY: 17 U.S.C. 118(b)(3).

SOURCE: 43 FR 25068, June 8, 1978, unless otherwise noted.

§ 304.1 General.

This Part, 304, establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning on the effective date of this part and ending on December 31, 1982. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

§ 304.2 Definition of public broadcasting entity.

As used in this part, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of Title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d)(2).

§ 304.3 Performance of ASCAP musical compositions by PBS and NPR and their stations.

(a) Public Broadcasting Service (PBS) and its stations and National Public Radio (NPR) and its stations shall pay the American Society of Composers, Authors, and Publishers (ASCAP) in each calendar year the total sum of $1,739,715 for the performance by PBS, NPR and their stations of copyrighted published nondramatic musical compositions in the repertory of ASCAP. However, for such use from the effective date of this schedule through December 31, 1978, 56 percent of the above sum shall be paid not later than December 31, 1978.

(b) The payment required by paragraph (a) shall be made in two equal payments on July 31 and December 31 of each calendar year.

(c) In the event that in the future an unaffiliated or new radio station becomes a member of NPR, the basic rate described in paragraph (a) hereof shall be increased by the amount ASCAP would have received from said station under § 304.5 and § 304.6 for the balance of the term remaining. In the event a current member of NPR should leave that membership, the basic rate described in paragraph (a) hereof shall be decreased by the amount ASCAP would have received from said station if they had been an unaffiliated station under § 304.5 and § 304.6.

(d) In the event that a station becomes a member or ceases to be a member of PBS, the basic rate described in paragraph (a) shall be increased or decreased by $5,567 for the balance of the term.

(e) Records of use. (1) PBS and NPR shall maintain and quarterly furnish to ASCAP copies of their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs during the preceding quarter (including the title, composer and author, type of use, and manner of performance thereof, in each case to the extent such information is reasonably obtainable by PBS and NPR in connection therewith). No such cue sheets need be furnished prior to October 1, 1978.

(2) PBS and NPR stations shall furnish to ASCAP upon the request of ASCAP a music-use report during one week of each calendar year. No more than 20 percent of the total number of PBS stations, and no more than 20 percent of the total number of NPR stations shall be required to furnish such reports to ASCAP in any one calendar year.

[43 FR 25068, June 8, 1978, as amended at 46 FR 39139, July 31, 1981]

§ 304.4 Performance of other musical compositions by PBS and NPR and their stations.

The following schedule of rates and terms shall apply to the performance by PBS, by NPR, by stations of PBS, and by stations of NPR, of copyrighted published nondramatic musical compositions, other than compositions in the repertory of ASCAP and other than such compositions subject to the provisions of 17 U.S.C. 118(b)(2).

(a) *Determination of royalty rate.*

For the performance of such a work in a feature presentation of PBS	$139
For the performance of such a work as background or theme music in a PBS program	35
For the performance of such a work in a feature presentation of NPR	14
For the performance of such a work as background or theme music in a NPR program	3
For the performance of such a work in a feature presentation of a station of PBS	49
For the performance of such a work as background or theme music in a program of a station of PBS	14
For the performance of such a work in a feature presentation of a station of NPR	8
For the performance of such a work as background or theme music in a program of a station of NPR	2

For the purposes of this schedule series theme music rates shall be double the single program rate for the entire series.

(b) *Payment of royalty rate.* The required royalty rate shall be paid to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year. However, the payment of the royalty fees for uses in 1978, subsequent to the effective date of this schedule, need not be made until January 31, 1979

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that is required by § 304.3(e)(2) to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

[43 FR 25068, June 8, 1978, as amended at 46 FR 39139, July 31, 1981]

§ 304.5 Performance of musical compositions by public broadcasting entities licensed to colleges or universities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by nonprofit radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established by this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by nonprofit radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

For all such compositions in the repertory of ASCAP, annually	$125
For all such compositions in the repertory of BMI, annually	125
For all such compositions in the repertory of SESAC, annually	27
For the performance of any other such composition	1

For performances of the repertory of ASCAP, BMI, and SESAC from the effective date of this schedule through December 31, 1978 a fee of 56% of the above rates shall be paid.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each calendar year. For performances from the effective date of this schedule through December 31, 1978, the required fee shall be paid not later than September 1, 1978. The required fee for the performance of all other musical compositions shall be paid not later than the end of the calendar year in which the work was performed.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, and SESAC upon request a music-use report during one week of each calendar year. ASCAP, BMI, and SESAC each shall not in any one calendar year request more than 10 stations to furnish such reports.

[43 FR 25068, June 8, 1978, as amended at 46 FR 39139, July 31, 1981]

§ 304.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities or other nonprofit educational institutions, and not affiliated with NPR.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and nonprofit radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by nonprofit radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For radio stations with no more than 20 watts transmitter power output:

For all such compositions in the repertory of ASCAP, annually	$251
For all such compositions in the repertory of BMI, annually	251
For all such compositions in the repertory of SESAC, annually	56
For the performance of any other such compositions	1

For performances of the repertory of ASCAP, BMI, and SESAC from the effective date of this schedule through December 31, 1978, a fee of 56 percent of the above rates shall be paid.

(2) For radio stations with more than 20 watts transmitter power output:

For all such compositions in the repertory of ASCAP, annually	$628
For all such compositions in the repertory of BMI, annually	628
For all such compositions in the repertory of SESAC, annually	139
For the performance of any other such compositions	1

For performances of the repertory of ASCAP, BMI, and SESAC from the effective date of this schedule through December 31, 1978, a fee of 56 percent of the above rates shall be paid.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, and SESAC not later than January 31 of each calendar year. For performances from the effective date of this schedule through December 31, 1978, the required fee shall be paid not later than September 1, 1978. The required fee for the performance of all other musical compositions shall be paid not later than the end of the calendar year in which the work was performed.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, and SESAC upon request a music-use report during one week of each calendar year. ASCAP, BMI, and SESAC each shall not in any one calendar year request more than 10 stations to furnish such reports.

[43 FR 25068, June 8, 1978, as amended at 46 FR 39139, July 31, 1981]

§ 304.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such recorded nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities, as defined in 17 U.S.C. 118(g). The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) For uses described in subsection (a) of a musical work in a PBS distributed program:

Feature	$69
Feature (concert) (per minute)	21
Background	35
Theme: Single program or first series program	35
Other series program	14

(2) For such use of a musical work in a NPR produced program. For purposes of this schedule "National Public Radio" programs includes all programs produced in whole or in part by NPR, or by any NPR station or other nonprofit institution or organization under contract with NPR:

Feature	$14
Feature (concert) (per ½ hour)	21
Background and Theme	3

(3) For such uses other than in a PBS distributed television program:

Feature	$27
Feature (concert) (per minute)	8
Background	14
Theme: Single program or first series program	14
Other series program	8

(4) For such uses other than in a NPR produced radio program:

Feature	$8
Feature (concert) (per ½ hour)	10
Background and Theme	2

For the purposes of this schedule, a "concert" feature shall be deemed to be the nondramatic presentation of all or part of a symphony, concerto, or other series work originally written for concert or opera performance.

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year

period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1982 shall be subject to the rates established in this schedule.

(c) *Payment of royalty rates.* PBS, NPR, or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year. *Provided, however,* That payment of fees for uses in 1978, subsequent to the effective date of this schedule, need not be made until January 31, 1979.

(d) *Records of use.* (1) Maintenance of cue sheets. PBS and its stations, NPR and its stations, or other public broadcasting entity shall maintain and furnish to copyright owners whose musical works are recorded pursuant to this schedule copies of their standard cue sheets listing the recording of the musical works of such copyright owners. Such cue sheets shall be furnished not later than July 31 of each calendar year for recordings during the first six months of the calendar year, and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. No such furnishing of cue sheets shall be required before January 31, 1979.

(2) Content of cue sheets. Such cue sheets shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For concert music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) *Filing of use reports with the Copyright Royalty Tribunal* (CRT)—(1) *Deposit of cue sheets.* PBS and its stations, NPR and its stations, or other broadcasting entity shall deposit with the CRT copies of their standard music cue sheets listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year, and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. No such deposit of cue sheets shall be required before January 31, 1979.

(2) *Content of cue sheets.* Such cue sheets shall include:

(i) The title, composer and author to the extent such information is reasonably obtainable.

(ii) The type of use and manner of performance thereof in each case.

(iii) For concert music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

[43 FR 25068, June 8, 1978, as amended at 46 FR 39139, July 31, 1981]

§ 304.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) *Scope.* This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use or works within the scope of this section:

For such uses in a PBS distributed program:	
For a feature display of a work	$42
For a background and montage display	21
For use of a work for program identification or for thematic use	83
For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective or whether the reproduced work of fine art is copyrighted so as to be subject also to payment or a display fee under the terms of this schedule	27
For such uses in other than PBS distributed programs:	
For a featured display of work	27
For background and montage display	14
For use of a work for program identification or for thematic use	56

For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	14

(2) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display. Any display less than full-screen or substantially full-screen is deemed to be a "background or montage display".

(3) "Thematic use" is the utilization of the work of one or more artists where the works constitute the central theme of the program or convey a story line.

(4) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine arts.

(c) *Payment of royalty rate.* PBS or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year. *Provided, however,* That payment of fees for uses in 1978, subsequent to the effective date of this schedule, need not be made until January 31, 1979.

(d) *Records of use.* (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic, and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year. No such furnishing of listings shall be required before January 31, 1979.

(e) *Filing of use reports with the CRT.* (1) PBS and its stations or other public broadcasting entity shall deposit with the CRT copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.

(2) Such listings shall be furnished not later that July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year. No such furnishing of listings shall be required before January 31, 1979.

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule.

(2) Pursuant to the provisions of 17 U.S.C. 118(f), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

[43 FR 25068, June 8, 1978, as amended at 46 FR 39139, July 31, 1981]

§ 304.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of or unable to locate a copyright owner who is entitled to receive a royalty payment under this part they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the CRT, upon request, information concerning fees deposited in trust funds.

§ 304.10 Cost of living adjustment.

(a) On August 1, 1979 the CRT shall publish in the FEDERAL REGISTER a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the first Index published subsequent to the effective date of this schedule of royalty payments to the last Index published prior to August 1, 1979. On each August 1 thereafter the CRT shall publish a notice of the change in the cost of living during the period from the first Index published subsequent to the previous notice, to the last index published prior to August 1 of that year.

(b) On the same date of the notices published pursuant to paragraph (a), the CRT shall publish in the FEDERAL REGISTER a revised schedule of rates which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a). Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates shall become effective thirty days after publication in the FEDERAL REGISTER.

§ 304.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of no more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

§ 304.12 Amendment of certain regulations.

Subject to 17 U.S.C. 118, the Administrative Procedure Act and the Rules of Procedure of the Copyright Royalty Tribunal, the CRT may at any time amend, modify or repeal regulations in this part adopted pursuant to 17 U.S.C. 118(b)(3) by which "Copyright owners may receive reasonable notice of the use of their works" and "under which records of such use shall be kept by public broadcasting entities."

§ 304.13 Issuance of interpretative regulations.

Subject to 17 U.S.C. 118, the Administrative Procedure Act and the Rules of Procedure of the Copyright Royalty Tribunal, the CRT may at any time, either on its own motion or the motion of a person having a significant interest in the subject matter, issue such interpretative regulations as may be necessary or useful to the implementation of this part. Such regulations may not prior to January 1, 1983, alter the schedule of rates and terms of royalty payments established by this part.

§ 304.14 Report to Congress.

On January 3, 1980 the CRT, after conducting such proceedings as it may deem appropriate, shall transmit a report to the United States Congress making such recommendations concerning 17 U.S.C. 118 that it finds to be in the public interest.

PART 305—CLAIMS TO PHONORECORD PLAYER (JUKEBOX) ROYALTY FEES

Sec.

305.1 General.
305.2 Time of filing.
305.3 Content of claims.
305.4 Justification of claims.
305.5 Forms.

AUTHORITY: 17 U.S.C. 116(c)(2).

SOURCE: 43 FR 40501, Sept. 12, 1978, unless otherwise noted.

§ 305.1 General.

This regulation prescribes procedures pursuant to 17 U.S.C. 116(c)(2), whereby persons claiming to be entitled to compulsory license fees for public performances of nondramatic musical works by means of coin-operated phonorecord players shall file claims with the Copyright Royalty Tribunal.

§ 305.2 Time of filing.

During the month of January in each year every person claiming to be entitled to phonorecord player fees for performances of nondramatic musical works during the prceeding calendar year shall file a claim with the Copyright Royalty Tribunal. Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliation agreements, for purposes of this filing and fee distribution.

§ 305.3 Content of claims.

The claims filed shall include the following information:

(a) The full legal name of the person or entity claiming compulsory license fees. Performing rights societies are not required to include lists of members or affiliates to whom distributions would be made by such societies.

(b) The full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(c) A specific agreement to accept as final the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees, except for the judicial review provided in 17 U.S.C. 116.

§ 305.4 Justification of claims.

(a) Not later than the first day of November of each year, every person or entity which has filed a claim pursuant to § 305.2 shall file with the Copyright Royalty Tribunal a statement claiming the proportionate share of compulsory license fees to which such person or entity believes it is entitled. The statement shall include a detailed justification for the requested entitlement and shall also include such specific information as the Copyright Royalty Tribunal may require by regulation or order.

(b) The entitlement justification statement required by paragraph (a) need not be filed with the Copyright Royalty Tribunal if it has been determined by the Tribunal that there is no controversy as to the distribution of royalty fees.

§ 305.5 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

PART 306—ADJUSTMENT OF ROYALTY RATE FOR COIN OPERATED PHONORECORD PLAYERS

Sec.
306.1 General.
306.2 Definition of coin-operated phonorecord player.
306.3 Compulsory license fees for coin-operated phonorecord players.
306.4 Cost of living adjustment.

AUTHORITY: 17 U.S.C. 801(b)(1) and 804(e).

SOURCE: 45 FR 890, Jan. 5, 1981 unless otherwise noted.

§ 306.1 General.

This Part 306 establishes the compulsory license fees for coin-operated phonorecord players beginning on January 1, 1982, in accordance with the provisions of 17 U.S.C. 116 and 804(a).

§ 306.2 Definition of coin-operated phonorecord player.

As used in this part, the term "coin-operated phonorecord player" shall have the same meaning as set forth in 17 U.S.C. 116(e)(1).

§ 306.3 Compulsory license fees for coin-operated phonorecord players.

(a) Commencing on January 1, 1982 the annual compulsory license fee for a coin-operated phonorecord player, as set forth in 17 U.S.C. 116(b)(1)(A), shall be $25.

(b) Commencing on January 1, 1984 the annual compulsory license fee for a coin-operated phonorecord player, as set forth in 17 U.S.C. 116(b)(1)(A), shall be $50, subject to adjustment in accordance with § 306.4 hereof.

(c) In accordance with 17 U.S.C. 116(b)(1)(A), if performances are made available on a particular phonorecord player for the first time after July 1 of any year, the compulsory license fee for the remainder of that year shall be one half of the annual rate of (a) or (b) of this section, subject to adjustment in accordance with § 306.4 hereof.

§ 306.4 Cost of living adjustment.

(a) On August 1, 1986 the Copyright Royalty Tribunal (CRT) shall publish in the FEDERAL REGISTER a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the first Index published subsequent to February 1, 1981 to the last Index published prior to August 1, 1986.

(b) On the same date as the notices published pursuant to paragraph (a), the CRT shall publish in the FEDERAL REGISTER a revised schedule of the compulsory license fee which shall adjust the dollar amount set forth in § 306.3(b) according to the change in the cost of living determined as provided in paragraph (a). Such compulsory license fee shall be fixed at the nearest dollar.

(c) The adjusted schedule for the compulsory license fee shall become effective on January 1, 1987.

PART 307—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

Sec.
307.1 General.
307.2 Royalty payable under compulsory license.
307.3 Adjustment of royalty rate.

AUTHORITY: 17 U.S.C. 801(b)(1) and 804.

§ 307.1 General.

This Part 307 adjusts the rates of royalty payable under compulsory license for making and distributing phonorecords embodying nondramatic musical works, under 17 U.S.C. 115.

[46 FR 891, Jan. 5, 1981]

§ 307.2 Royalty payable under compulsory license.

With respect to each work embodied in the phonorecord, the royalty payable shall be either four cents, or three-quarters of one cent per minute of playing time or fraction thereof, whichever amount is larger, for every phonorecord made and distributed on or after July 1, 1981, subject to adjustment pursuant to § 307.3.

[46 FR 891, Jan. 5, 1981, as amended at 46 FR 62268, Dec. 23, 1981]

§ 307.3 Adjustment of royalty rate

(a) For every phonorecord made and distributed on or after January 1, 1983, the royalty payable with respect to each work embodied in the phonorecord shall be either 4.25 cents, or .8 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (b) and (c) of this section.

(b) For every phonorecord made and distributed on or after July 1, 1984, the royalty payable with respect to each work embodied in the phonorecord shall be either 4.5 cents, or .85 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (c) of this section.

(c) For every phonorecord made and distributed on or after January 1, 1986, the royalty payable with respect to each work embodied in the phonorecord shall be either 5 cents, or .95 cent per minute of playing time or fraction thereof, whichever amount is larger.

[46 FR 62268, Dec. 23, 1981]

PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

Sec.
308.1 General.
308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

§ 308.1 General.

This part establishes adjusted terms and rates or royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801 (b)(2) (A) and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

(17 U.S.C. 801(b)(2)(A) and (D))

[46 FR 897, Jan. 5, 1981]

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) Commencing with the first semiannual accounting period of 1981 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. 111(d)(2)(B) shall be as follows:

(1) .817 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (a)(2) through (4);

(2) .817 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .514 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .242 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the first semiannual accounting period of 1981 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C. 111(d)(2) (C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total $107,000 or less, gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which $107,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to les than $4,000. The royalty fee payable under this paragraph shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than $107,000 but less than $214,000, the royalty fee payable under this paragraph shall be: (i) 0.5 of 1 per centum of any gross receipts up to $107,000 and (ii) 1 per centum of any gross receipts in excess of $107,000 but less than $214,000, regardless of the number of distant signal equivalents, if any.

(17 U.S.C. 801(b)(2)(A) and (D))

[46 FR 897, Jan. 5, 1981]

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FINDING AIDS

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963, and 1964-1972," published in three separate volumes.

1973

(Regulations published from January 1, 1973 through June 30, 1973)

37 CFR		38 FR Page
Chapter I		
1.55	(c) added	9297
1.225	Revised	10005
1.231	(a)(4) and (5) and (d) revised	10005
1.243	Amended	10005
1.244	(c) and (d) amended	10005
1.251	(a) revised	10005
1.253	(f) revised	10005
1.272	(c) revised	10005
1.277	(a) revised	10005
1.281	Revised	10005
2.68	Revised	7985
2.85	Revised, eff. Sept. 1, 1973	14681
5.3	(b) revised	10006
6.1	Redesignated as 6.2; new 6.1 added, eff. Sept. 1, 1973	14681
6.2	Redesignated as 6.3	14681
6.3	Redesignated as 6.4	14681
Chapter II		
201.3	Revised	3045
201.6	(c) revised	3045
202.1	(c) revised	3045
202.4	(b)(1) revised	3045

1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

37 CFR		38 (39*) FR Page
Chapter I		
1.84	(b), (d)(1), (f), (j) and (1) revised	*12247
1.253	(e) and (f) revised	*12247
2.31	Revised	*12247
2.47	Revised	18876
2.52	(c) and (d) revised	*12247
2.56	Revised	*12248
2.57	Revised	18876
	Revised	*12248
2.85	(b) amended	*16885

1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

37 CFR		39 (40†) FR Page
Chapter I		
Chapter heading revised		†5158
Chapter text: nomenclature changes		†5158
1.65	(a) revised	†6339
1.67	(a) Revised	†6339
1.225	Revised	†11873
1.231	(c) revised	†11873
1.247	(c) revised	†11873
1.251	(a), (b), and (c) revised	†11873
1.253	Revised	†11873
1.277	(b) revised	†11874

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

37 CFR—Continued

Chapter II

	39 (40†) FR Page
202.15 (e) added	†12501
202.15a (c) revised	†12501

1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

37 CFR

Chapter I

	40 (41Δ) FR Page
1.12 Revised	Δ757
1.21 (e), (j), (k), (q) and (u) revised; (l) and (m) removed	57358
1.25 (a) revised	57359
1.136 (b) revised	Δ757
1.155 Revised	44813
1.165 (b) revised	57359
1.197 (b) revised	Δ757
1.244 (c) revised	Δ758
1.256 (b) revised	Δ758
1.304 Revised	Δ758
1.316 (b) revised	44814
1.317 Revised	44814
2.6 (a), (d) and (e) revised; (f) added	57359
2.11 Revised	Δ758
2.14 (c) revised	Δ758
2.15 Revised	Δ758
2.18 Revised	Δ758
2.19 Revised	Δ758
2.37 Revised	Δ758
2.75 Revised	Δ758
2.80 Revised	Δ758
2.85 (e) revised	Δ758
2.93 Revised	Δ759
2.99 (a) and (b) revised	Δ758
2.101 Revised	Δ759
2.102 Revised	Δ759
2.103 Revised	Δ759
2.105 Revised	Δ759
2.111 Revised	Δ759
2.112 Revised	Δ759
2.113 Heading and (b) revised	Δ760
2.119 (a) and (b) revised	Δ760
2.120 (c) revised	Δ760
2.123 (e)(2) revised; (g)(3) added	Δ760
2.127 (b) revised	Δ760
2.129 Heading and (b) and (c) revised	Δ760
2.141 Revised	Δ760
2.144 Revised	Δ760
2.145 (a), (b), and (d) revised	Δ761
(a) corrected	Δ16147
2.161 Revised	Δ761

Note: Symbol (†) refers to 1975 page numbers.

Note: Symbol (Δ) refers to 1976 page numbers.

37 CFR—Continued

Chapter I—Continued

	40 (41Δ) FR Page
2.162 Revised	Δ761
2.172 Revised	Δ761
2.183 (a), (b), and (c) revised	Δ761
2.185 (a)(2) and (4) revised	Δ762
2.187 Revised	Δ762
4 Revised	Δ17727
4.2 Revised	Δ762
4.3 Removed	Δ762

1976–1977

(Regulations published from July 1, 1976 through June 30, 1977)

37 CFR

Chapter I

	41 (42*) FR Page
1.8 Added	43721
1.11 Revised	*5593
1.14 (b) and (d) revised	*5593
1.51 Revised	*5593
1.52 (a) revised	*5593
1.56 Revised	*5593
1.65-1.68 Undesignated center heading amended	*5594
1.65 Heading and (a) revised; eff. 1-1-78	*5594
1.69 Added; eff. 1-1-78	*5594
1.97-1.99 Undesignated center heading and sections added	*5594
1.109 Added	*5594
1.175 (a) revised	*5594
1.176 Revised	*5595
1.194 Revised	*5595
1.196 (d) added	*5595
1.228 Revised	27832
1.243 Revised	27832
1.244 Revised	27832
1.254 Revised	27832
1.256 Revised	27833
1.291 Revised	*5595
1.292 (b) revised	*5595
1.346 Revised	*5595
3 Technical correction	*31159
3.1-3.7 Removed	*27884
3.11 Revised	*27884
3.11a Revised	*27884
3.12 Revised	*27885
3.12a Revised	*27885
3.13 Revised	*27885
3.13a Revised	*27885
3.14 Revised	*27886
3.14a Revised	*27886

Note: Symbol (*) refers to 1977 page numbers.

37 CFR—Continued

Chapter I—Continued

		41 (42*) FR Page
3.16	Revised	*27886
3.16a	Revised	*27886
3.17	Revised	*27887
3.17a	Revised	*27887
3.18	Revised	*27887
3.18a	Revised	*27888
3.21	Removed	*27888
3.23	Revised	*27888
3.23a	Revised	*27888
3.25	Removed	*27888
3.26	Revised	*27888
3.26a	Revised	*27889
3.28	Revised	*27889
3.29	Revised	*27889
3.31	Revised	*27889
3.31a	Revised	*27889
3.32	Revised	*27889
3.32a	Revised	*27890
3.33	Revised	*27890
3.33a	Added	*27890
3.36	Revised	*27890
3.37	Revised	*27890
3.39	Revised	*27890
3.41	Revised	*27890
3.43	Revised	*27891
3.46	Revised	*27891
3.50	Revised	*27891
3.52	Revised	*27891
3.53	Revised	*27891
3.54	Revised	*27891
3.55	Added	43721
4.23	Added	43721

Chapter II

201.1	Amended	*2962
	Technical correction	*9665
201.2	(b)(2) removed; (c)(2)(ii) amended	*2962
	Technical correction	*9665
201.3	Amended	*2962
	Technical correction	*9665
201.8	(b) revised	*2962
	Technical correction	*9665
201.9	Added	*16777
201.11	Added	*15067

1977-1978

(Regulations published from July 1, 1977 through June 30, 1978)

37 CFR

Chapter I

		42 (43†) FR Page
1.1—1.26	(Subpart A) heading added	†20460

NOTE: Symbol (*) refers to 1977 page numbers.

37 CFR—Continued

		42 (43†) FR Page
1.1	Text and note revised	†20461
1.4	(a) revised	†20461
1.5	(a) revised	†20461
1.8	(a) introductory text and (2) (i) revised; (a)(2)(xi) added	†20461
1.9	Added	†20461
1.11	(a) revised; eff. 8-1-78	†28477
1.12	Revised	†20461
1.14	(a) and (c) revised	†20462
1.21	(w) and note added	†20462
1.23	Revised	†20462
1.25	(b) revised	†20462
1.26	Revised	†20462
1.31—1.352	(Subpart B) Heading added	†20460
1.52	(a) and (b) revised	†20462
1.55	(d) added	†20463
1.57	Revised	†20463
1.58	Revised	†20463
1.61	Added	†20463
1.70	Added	†20463
1.72	(b) revised	†20464
1.75	(c) revised; (f) and (g) added	†4015
1.77	Revised	†20464
1.78	(a) revised	†20464
1.81	Revised	†4015
1.83	(c) added	†4015
1.84	(a) through (f), (i), (j), and (l) amended	†20464
1.104	(c), (d), and note added	†20465
1.141	Revised	†20465
1.146	Revised	†20465
1.205	(c) added; eff. 8-1-78	†28478
1.207	(b) revised; eff. 8-1-78	†28478
1.217	Revised; eff. 8-1-78	†28478
1.223	(c) revised; eff. 8-1-78	†28478
1.225	Revised; eff. 8-1-78	†28478
1.245	Revised; eff. 8-1-78	†28478
1.246	Added; eff. 8-1-78	†28478
1.247	Revised; eff. 8-1-78	†28478
1.287	(c) amended; eff. 8-1-78	†28479
1.318	Added	†20465
1.331	(a) and (c) revised	†20465
1.401—1.482	(Subpart C) Added	†20466
3.56	Added	†20469
3.57	Added	†20470
5.1	Revised	†20470
5.3	Revised	†20470
	(b) amended; eff. 8-1-78	†20479
5.11	Revised	†20471
5.13	Revised	†20471

NOTE: Symbol (†) refers to 1973 page numbers.

37 CFR—Continued

42 (43†) FR
Page

5.14 (b) and (c) revised.............. †20471
5.15 (a) revised.............. †20471
5.17 Revised.............. †20471

Chapter II

201.4 Revised.............. †772
201.5 Revised.............. †773
201.8 Revised.............. †772
201.10 Added.............. 45920
201.11 Revised.............. †960, 27830
201.12 Added.............. 53961
201.13 Added.............. 64684
201.14 Added.............. 59265
201.15 Added.............. 63778
201.16 Added.............. 63780
201.17 Added.............. †962
  Revised.............. †27832
201.18 Added.............. 64891
201.19 Added.............. 64892
202.3 Revised.............. †966
202.4—202.9 Removed.............. †966
202.10 (a) and (c) removed.............. †966
202.11 Removed.............. †966
202.12 (a) and (b) removed.............. †966
202.13 Removed.............. †966
202.14 (a) and (b) removed.............. †966
202.15 Removed.............. †767
202.15a Removed.............. †966
202.16 Removed.............. †767
202.17 Revised.............. †964
202.19 Added.............. †767
  (d)(2)(ii) revised.............. †12321
202.20 Added.............. †768
  (b)(2), (c)(2)(ix) and (d) revised.............. †11702
  (c)(2)(ii) revised.............. †12321
202.21 Added.............. †770
  (a), (c) and (e) revised.............. †11703
203 Added.............. †774
204 Added.............. †776

Chapter III

302 Added.............. †24528
304 Added.............. †25068

1978–1979

(Regulations published from July 1, 1978 to June 30, 1979)

37 CFR

43 (44Δ) FR
Page

Chapter I

1.217 (a) designation removed; (1) corrected.............. 57886
2.1 Revised.............. 35483
2.6 (g) added.............. 35483

Note: Symbol (†) refers to 1978 page numbers.

37 CFR—Continued

43 (44Δ) FR
Page

Chapter I—Continued

2.101 (c) added.............. 35483
2.162 (d) revised.............. 35483
4.1 Revised.............. 55396
4.1a Revised.............. 55397
4.2 Revised.............. 55397
4.5 Revised.............. 55397
4.6 Revised.............. 55397
4.7 Revised.............. 55398
4.8 Revised.............. 55398
4.9 Revised.............. 55398
4.10 Revised.............. 55398
4.11 Revised.............. 55399
4.13 Revised.............. 55399
4.14 Revised.............. 55399
4.15 Revised.............. 55399
4.16 Revised.............. 55400
4.17 Revised.............. 55400
4.18 Revised.............. 55401
4.21 Revised.............. 55401
4.22 Revised.............. 55401
4.23 Revised.............. 55402

Chapter II

201.4 Revised.............. 35044
201.16 (b)(1)(ii) revised; (b)(2) (i) and (d) amended; (c)(4), (f) and (g) added.............. 37453, 50679
  (b)(6) added.............. 59379
201.18 Revised.............. 44517
  Hearing.............. 54247
  Comment time extended.............. 57253
201.19 Revised.............. 44519
  Hearing.............. 54247
  Comment time extended.............. 57252
202.19 (d)(2)(ii) revised.............. 31133
  Revised.............. 41979
202.20 (b)(2)(ii) revised.............. 31133
  Revised.............. 41981
202.21 Revised.............. 41983

Chapter III

301 Added.............. 53719
302.5 Revised.............. Δ29893
302.6 Revised.............. Δ29893
302.9 Added.............. 40225
302.10 Added.............. Δ29894
303 Added.............. 40500
305 Added.............. 40501

Note: Symbol (Δ) refers to 1979 page numbers.

1979–1980

(Regulations published from July 1, 1979 to June 30, 1980)

37 CFR

	44 (45*) FR Page
Chapter II	
201.15 Revised	*13073
201.23 Added	*41414
Chapter III	
301.22 (c) revised	53161
302.2 Revised	60727
302.5 Removed	60727
302.6 Revised	60727
302.7 Revised	*26959
304.3 (a) and (d) amended	45130
304.4 (a) amended	45130
304.5 (c) amended	45130
304.6 (c) (1) and (2) amended	45130
(c)(2) corrected	50041
304.7 (b) (1), (2), (3) and (4) amended	45130
304.8 (b)(1) revised	45131

Note: Symbol (*) refers to 1980 page numbers.

1980–1981

(Regulations published from July 1, 1980 to June 30, 1981)

37 CFR

	45 (46†) FR Page
Chapter I	
1.1 Revised	†29181
1.5 (d) added	†29181
1.11 (c) and (d) added	†29181
1.21 (l) added	†2612
(x) added	†24179
1.26 Revised	†24179
1.33 Heading revised; (c) added	†29181
1.34 Revised	†29181
1.36 Revised	†29182
1.77 (c) revised	†2612
1.84 (f) corrected	73657
1.96 Added	†2612
1.104 (a) and (b) revised	†29182
1.107 Revised	†29182
1.109 Revised	29182
1.111 Revised	†29182
1.112 Revised	†29182
1.113 (a) revised	†29182
1.115 Revised	†29183
1.116 (a) and (b) revised	†29183
1.121 (f) added	†29183
1.191 Revised	†29183
1.192 (a) revised	†29183
1.196 (b), (c), and (d) revised	†29183

37 CFR—Continued

	45 (46†) FR Page
Chapter I—Continued	
1.197 (a) and (c) revised	†29184
1.231 (a)(1) revised	†29184
1.248 Revised	†29184
1.291 Heading and (c) revised; (b) removed	†29184
1.301 Revised	†29184
1.303 Revised	†29184
1.501—1.570 (Subpart D) Added	†29185
2.106 (b) revised	†6940
2.114 (b) revised	†6940
(b)(2) (i) and (ii) corrected	11548
4.16a Correctly designated and corrected	56343
5.19 Revised	72654
Chapter II	
201.3 Removed	†33249
201.6 (c) revised	†25442
201.7 Removed	†33249
201.8 Revised	†12704
201.9 (b) revised	†33249
201.17 (c)(2) and (f)(3) revised; (c)(3), (f)(4) and (i) added	45274
201.18 Added	79045
201.19 Added	79046
201.22 Added	†28849
202.2 (a) and introductory text of (b) revised	†33249
202.10 Revised	†33249
202.12 Removed	†33249
202.14 Removed	†33249
202.18 Removed	†33249
Chapter III	
303.3 Removed; eff. 7-31-81	†32578
304.3 (a) and (d) amended	51198
304.4 (a) amended	51198
304.5 (c) amended	51198
304.6 (c) (1) and (2) amended	51198
304.7 (b) (1) through (4) amended	51198
304.8 (b)(1) revised	51198
306 Added	†890
307 Added	†891
Final rule findings	†10466
308 Added	†897

Note: Symbol (†) refers to 1981 page numbers.

1981–1982

(Regulations published from July 1, 1981 through June 30, 1982)

37 CFR

		46 (47Δ) FR Page
Chapter I		
1.56	Heading and (d) revised; (e) through (i) added	Δ21751
1.106	(c) added	Δ21752
1.175	(a) revised	Δ21752
1.193	(c) added	Δ21752
1.225	(a) revised	52363
1.231	(d) revised	52363
1.253	(e) revised	52363
1.254	Amended	52363
1.258	Revised	52363
1.288	Added	52363
1.291	Revised	Δ21752
1.555	Revised	Δ21752
1.565	(b) revised; (d) added	Δ21753
1.570	(e) revised	Δ21753
Chapter II		
201.11	(c)(1)(iv) revised; interim	Δ21789

37 CFR—Continued

		46 (47Δ) FR Page
Chapter II—Continued		
201.16	(b) (3), (4) and (6)(i), (c)(1) and (g)(1)(iv) revised	Δ25005
	(h) added	Δ25006
201.17	(b) (8) and (9) added; (e)(9) introductory text, (vi), and (viii) and (f)(3) revised	Δ21789
201.20	Added	58312
202.2	(a)(1) corrected	34329
202.17	Revised	58671
Chapter III		
304.3	(a) and (d) amended	39139
304.4	(a) amended	39139
304.5	(c) amended	39139
304.6	(c) (1) and (2) amended	39139
304.7	(b) (1) through (4) amended	39139
304.8	(b)(1) revised	39139
307.2	Amended	62268
307.3	Revised	62268
307.4	Removed	62268

NOTE: Symbol (Δ) refers to 1982 page numbers.